

## CHAPTER 2: THE PARIS PEACE ACCORDS

### KEY QUESTIONS AND KEY ISSUES

Most of the questions and controversies that still surround the POW/MIA issue can be traced back to the Paris Peace Accords and their immediate aftermath. If that agreement had been implemented in good faith by North Vietnam and with necessary cooperation from Cambodia and Laos, the fullest possible accounting of missing Americans would have been achieved long ago.

#### *Obstacles to resolution*

The great accomplishment of the peace agreement was that it resulted in the release of 591 Americans, of whom 566 were military and 25 civilian. It also established a framework for cooperation in resolving POW/MIA related questions that remains of value today. Unfortunately, implementation of the agreement failed, for a number of reasons, to resolve the POW/MIA issue.

During its investigation, the Committee identified several factors that handicapped U.S. officials during the negotiation of the peace agreement, and during the critical first months of implementation.

The first and most obvious obstacle to a fully effective agreement was the approach taken to the POW/MIA issue by North Vietnam (DRV) and its allies. During the war, the DRV violated its obligations under the Geneva Convention by refusing to provide complete lists of prisoners, and by prohibiting or severely restricting the right of prisoners to exchange mail or receive visits from international humanitarian agencies. During negotiations, the DRV insisted that the release of prisoners could not be completed prior to the withdrawal of all U.S. forces, and consistently linked cooperation on the POW/MIA issue to other issues, including a demand for reconstruction aid from the United States. Once the agreement was signed, the DRV was slow to provide a list of prisoners captured in Laos. Following Operation Homecoming, the North Vietnamese refused to cooperate in providing an accounting for missing Americans, including some who were known to have been held captive at one time within the DRV prison system. Perhaps most important of all, the DRV's continued pursuit of a military conquest of the south dissipated prospects for cooperation on POW/MIA issues.

A second factor inhibiting the achievement of U.S. objectives was the limited leverage enjoyed by U.S. negotiators. It was U.S. policy, fully known to the North Vietnamese, that the U.S. sought to disengage from what had become the longest war in American history. President Nixon, who had inherited the war from his predecessors, was elected on a platform calling for an end to U.S. involvement; support was building rapidly within the Congress for measures that would have mandated a withdrawal conditioned solely on the return of prisoners; the antiwar movement had become more active and visible; and the American public had become increasingly divided and war-weary as the conflict continued. These same factors, along with the debilitating effects of the Watergate scandal on the Nixon Presidency, weakened the U.S. hand in responding to DRV violations after the peace agreement was signed.

A third factor limiting the success of the agreement was the absence of Lao and Cambodian representatives from the peace table. Although the U.S. negotiators pressed the DRV for commitments concerning the release of prisoners and an accounting for the missing throughout Indochina, the peace accords technically applied only to Vietnam. Although the DRV assured Dr. Kissinger that it would ensure the release of U.S. prisoners in Laos, the prisoners captured in Laos who were actually released had long since been transferred to Hanoi. No Americans held captive in Laos for a significant period of time were returned at Operation Homecoming. Neither the peace agreement, nor the assurances provided by the North Vietnamese to Dr. Kissinger, established procedures to account for missing Americans in Cambodia or Laos.

### *Purpose*

The overall purpose of the Committee's investigation of the Paris Peace Accords was to uncover information bearing on the likelihood that U.S. POWs were kept behind in Southeast Asia after Operation Homecoming. A secondary purpose was to determine

whether there were factors involved in the negotiation of the agreement, in the agreement itself, or in the subsequent public characterizations of the agreement by U.S. officials that affected our ability to obtain the fullest possible accounting of our POW/MIA's or that otherwise contributed to the ongoing controversy over the POW/MIA issue.

In order to make judgments about these larger issues, the Committee considered a number of more specific issues and questions.

First, the Committee reviewed the negotiating history to determine the priority attached by the U.S. side to the POW/MIA issue, the obstacles to a favorable agreement raised by the other side, and the compromises made before a final agreement could be reached.

Second, the Committee reviewed the POW/MIA provisions of the agreement itself to determine both their scope and enforceability. Of particular interest in this regard was the "side understanding" between the United States and the DRV which obligated the North Vietnamese to arrange for the release of U.S. POWs in Laos.

Third, the Committee examined the relationship between negotiations over the POW/MIA issue and discussions concerning possible U.S. reconstruction aid to North Vietnam.

Fourth, the Committee compared official American expectations with results in terms of the number and identities of prisoners released. Related to this was an examination of the basis for U.S. expectations. Clearly, if the U.S. had good reason to expect Americans to come home who did not come home, the possibility that some prisoners were intentionally withheld by the DRV or by communist forces in Laos would increase.

Finally, the Committee examined allegations concerning the apparent disparity in substance and tone between internal U.S. communications during the 60 days after the peace agreement was signed and official public statements made subsequent to the completion of Operation Homecoming.

### *Investigative approach*

The Committee began its investigation of the Paris Peace Accords and related matters determined to go beyond the public record to the private record of negotiations, internal U.S. agency communications and the sworn testimony of those who participated in shaping and implementing the agreement.

The Committee requested, and obtained, access to nearly all Executive branch materials dealing with the POW/MIA related aspects of the peace negotiations, including Presidential papers, the papers of then-National Security Adviser, Dr. Henry Kissinger, and the minutes of meetings conducted by the Washington Special Action Group (WSAG). A large quantity of these materials were then declassified and made available to the public at the Committee's request.

Committee staff investigators took a "bottom-up" approach to interviewing participants in the Paris Peace negotiations beginning with staff members and those with peripheral roles and continuing through the deposition of Dr. Kissinger and other senior Nixon Administration officials.

Among those interviewed and deposed with respect to this issue were the following (affiliations indicated below refer to the 1970-1973 time period):

*National Security Council Staff:* Dr. Henry Kissinger, Gen. Alexander Haig, Mr. Winston Lord, Mr. John Negroponte, Mr. Peter Rodman, Mr. John Holdridge, Gen. Brent Scowcroft, and Mr. Richard Kennedy.

*Department of Defense:* Mr. Melvin Laird, Mr. Elliot Richardson, Mr. James Schlesinger, Mr. William Clements, Admiral Daniel Murphy, Dr. Roger Shields, Mr. Lawrence Eagleburger, Maj. Gen. Richard Secord, Lt. Gen. Vernon Walters, B. Gen. George Guay, Admiral Thomas Moorer, Mr. Jerry Friedheim, and M. Gen. John R. Deane, Jr.

*Department of State:* Mr. William Rogers, Ambassador William Sullivan, Mr. George Aldrich, Mr. Heyward Isham, Ambassador McMurtrie Godley, and Mr. Frank Sieverts.

*Central Intelligence Agency:* Mr. James Schlesinger, Mr. George Carver, and Lt. Gen. Vernon Walters.

*U.S. Delegation to Four-Party Joint Military Commission:* Gen. John Wickham, Col. Paul Miles, Col. Lawrence Robson, Col. Bernard Russell, Lt. Gen. Larry Budge, and M. Gen. O'Connor.

These interviews and depositions were supplemented by public hearings on September 21, 22 and 24, 1992.

## BACKGROUND

### *Outline of the negotiations*

The United States and the Democratic Republic of Vietnam (DRV) conducted peace negotiations through two channels. The public channel began in May, 1968 with bilateral discussions between the United States and the DRV in Paris, France. In January, 1969, the Paris Conference on Vietnam convened with representatives from those two countries and from the Government of South Vietnam (GVN) and the Viet Cong (Provisional Revolutionary Government (PRG)). The second channel consisted of secret talks, which began in August, 1969, between Dr. Henry Kissinger, Assistant to President Nixon for National Security Affairs, and Xuan Thuy, the chief of the North Vietnamese Delegations to the Paris Peace Conference. In February, 1970, Le Duc Tho, a senior member of the North Vietnamese Politburo, replaced Thuy as North Vietnam's top participant in the talks.

### *Public sessions*

The Paris Conference on Vietnam held meetings on almost a weekly basis between January, 1969 and the end of the war. Throughout most of this period, the Conference served not as a forum for negotiations, but for propaganda campaigns on all sides. Minister Xuan Thuy, head of the North Vietnamese delegation, regularly lambasted the United States for its bombing campaigns, its "aggression" against Cambodia and Laos, its "neo-colonialist"

policy towards Vietnam and its support for the "dictatorial, bellicist and corrupt Thieu" regime.<sup>32</sup>

On January 21, 1971, at the 100th session of the conference, DRV Minister Xuan Thuy argued that:

... the Nixon Administration has ceaselessly clamored about the so-called question of "prisoners of war" to stir up public opinion, particularly in the United States. Once again, we think it necessary to state that, although the American pilots were captured in the act of committing crimes when bombing the Democratic Republic of Vietnam, our government has treated them with leniency and humanity. If the Nixon Administration is really concerned about Americans captured in the war, it should announce the total withdrawal from South Vietnam of U.S. troops and those of the other foreign countries in the U.S. camp by June 30, 1971 ... so that discussion may immediately begin on the question of releasing captured military-men ...<sup>33</sup>

The American delegation, headed by Ambassador David K.E. Bruce, concentrated much of its rhetorical fire on the failure of the DRV to live up to its obligations under the 1949 Geneva Convention regarding the treatment of prisoners of war. The POW issue was raised by the U.S. at more than half the sessions and often was the sole subject of American statements. Ambassador Bruce criticized, in particular, North Vietnam's refusal to identify all prisoners held, including those in South Vietnam and Laos; its refusal to allow regular correspondence to families; its failure to permit inspections by the Red Cross and its unwillingness to release the sick and badly injured. The U.S. delegation also challenged the DRV, without success, to accept an October 7, 1970 Nixon Administration proposal for the immediate and unconditional release of all prisoners of war.

#### *Secret talks*

Until October, 1972, the U.S. negotiating team for the secret talks consisted exclusively of National Security Adviser Henry Kissinger and several of his staff. Dr. Kissinger's primary assistants during various periods of the negotiations were NSC staff members Winston Lord, John Negroponte, Dick Smyser and Peter Rodman. General Alexander Haig, Dr. Kissinger's deputy, also attended several of the negotiating sessions and played a major role in convincing the South Vietnamese Government to accept the agreement. General Vernon Walters, the Army Attache at the U.S. Embassy in Paris and later Deputy Director of the CIA, arranged and acted as translator at the early meetings. The Defense Department had no representative on the team, while the State Department was not included until late October, 1972, when William Sullivan, Deputy

<sup>32</sup> Statement by Minister Xuan Thuy, Chief of the Delegation of the Government of the Democratic Republic of Vietnam, 100th Plenary Session of the Paris Peace Conference on Vietnam, January 21, 1971.

<sup>33</sup> Ibid.

Assistant Secretary of State for Pacific and East Asian Affairs, and George Aldrich, a Deputy Legal Adviser, were recruited.

By the time the secret talks began, the Nixon Administration had withdrawn 60,000 American troops from Vietnam and adopted the policy of "Vietnamization" of the war. The goal of this policy was to shore up the GVN through a massive infusion of military and economic assistance to enable it to survive despite the gradual withdrawal of American troops. The policy also called for greater use of American air power in order to induce the DRV to negotiate and to interdict supply lines running through Cambodia and Laos to the south. This policy, aimed explicitly at achieving "peace with honor," provided the context for U.S. negotiating objectives.

The U.S. entered the negotiations with three goals foremost in mind. The first was to obtain the fullest possible accounting of American POW/MIAs. The second was to ensure that the Government of South Vietnam's President Nguyen Van Thieu could stand alone after U.S. withdrawal. And the third was to establish a framework for the future political self-determination of the South Vietnamese people. In order to achieve these ends, U.S. negotiators sought: (1) the unconditional release of prisoners and a means to account for the missing throughout Indochina; (2) an internationally supervised ceasefire throughout Indochina; (3) the right to continue supplying military aid, including training and advisers, to South Vietnam; (4) the withdrawal of North Vietnamese forces from the south; and (5) a plan for free and fair elections in South Vietnam.

The overriding goal of the DRV, on the other hand, was to establish the conditions that would make a Communist military takeover in the south more likely. Thus, North Vietnamese negotiators insisted on the total withdrawal of U.S. troops (including advisers), the end of U.S. aid to South Vietnam, the release of Viet Cong prisoners by the GVN, and the replacement of President Thieu with a coalition government. North Vietnam also demanded reparations from the U.S. as compensation for war-related damage.

Neither the weekly public talks in Paris, nor the sporadically-held secret talks, resulted in progress until mid-1971. Until then, the U.S. insisted on an agreement that dealt only with the military issues of returning prisoners, a ceasefire and the withdrawal of forces. DRV officials, meanwhile, demanded both the removal of President Thieu and the unconditional withdrawal of American forces, while refusing to acknowledge the presence of their own troops in South Vietnam.

On May 31, 1971, with U.S. troop levels down from a peak of 540,000 to 270,000, Dr. Kissinger offered to negotiate a deadline for withdrawal of U.S. forces in exchange for a ceasefire and the release of American POWs. This triggered an exchange of comprehensive proposals that would ultimately lead to an agreement. Throughout 1971, however, Le Duc Tho held firm to his insistence that President Thieu be removed and no breakthrough occurred.

On January 25, 1972, President Nixon revealed publicly that secret talks with North Vietnam had been taking place. There followed a period of increased tensions marked by a major DRV offensive and a U.S. response which included the bombing of North Vietnam and the mining of Haiphong Harbor. Despite the fighting,

or perhaps because of it, the momentum on both sides for an agreement built rapidly. As a result, discussions between Dr. Kissinger and Le Duc Tho were held on July 19, August 1, August 15, September 15 and daily between October 8 and October 11. By the end of those sessions, the outline of an agreement had taken shape. The key concession from the American side was the willingness to accept a ceasefire that did not require DRV withdrawal from the south. The key DRV concession was a willingness not to demand the prior removal from office of President Thieu.

Prospects for an agreement by the end of October were dashed, however, when President Thieu objected bitterly to the proposed draft. Negotiations resumed between November 20 and December 14, 1972 but did not narrow remaining differences. This was followed by President Nixon's decision to order ten days of intensive bombing of the north. Negotiations started again in early January and concluded when Dr. Kissinger and Le Duc Tho initialed the "Agreement on Ending the war and Restoring Peace in Vietnam."

The Agreement was signed formally in Paris on January 27, 1973.

#### *The issue of the prisoners*

A major U.S. goal entering the negotiations was to guarantee the release of all Americans held captive throughout Indochina. This was repeatedly stated as an absolute condition for reaching agreement. When the agreement was announced, U.S. negotiators said, without reservation, that this vital American objective had been achieved. On January 23, 1973, the day the agreement was initialed, President Nixon announced that:

Within 60 days from this Saturday (the day the agreement was to be signed), all Americans held prisoner of war throughout Indochina will be released. There will be the fullest possible accounting for all of those who are missing in action. . . .<sup>34</sup>

The following day, Dr. Kissinger told reporters that:

We have been told that no American prisoners are held in Cambodia. American prisoners held in Laos and North Vietnam will be returned to us in Hanoi.<sup>35</sup>

Three years later, in 1976, the Montgomery Committee concluded that:

the provisions of the Paris Peace Agreement relative to POW's and MIA's and the Protocol on Prisoners and Detainees appear, at first glance and after more thoughtful consideration, not only adequate, but excellent. . . . These provisions constitute an achievement of which the American negotiators and the American people could be proud. Their true success, however, depended on their implementation, and their implementation depended on the cooperation of all parties.<sup>36</sup>

<sup>34</sup> Statement of President Richard M. Nixon, White House, January 23, 1973.

<sup>35</sup> Dr. Henry Kissinger, press conference, January 24, 1973.

<sup>36</sup> Final Report of House Select Committee on Missing Persons in Southeast Asia, December 13, 1976, p. 112.

Although the POW/MIA provisions may well have been the best achievable given the circumstances, it is clear from an examination of the negotiating record that there were significant differences between the original U.S. position and the final agreement on several key points. This is not surprising, given the nature of the negotiation process. The Montgomery Committee was surely correct, moreover, in stating that the success of the agreement depended on its implementation which, in turn, hinged on the cooperation of all parties. A review of the issues involved in the negotiation provides a useful introduction to the problems of implementation that would follow.

### *Timing of POW release*

A key issue early in the negotiations involved the timing of the release of U.S. POWs. On October 7, 1970, President Nixon proposed that prisoners be returned as part of an overall agreement requiring a regionwide ceasefire and a timetable for the withdrawal of all foreign troops, including the withdrawal of North Vietnamese troops from Cambodia, Laos and South Vietnam. The U.S. maintained this position until May 31, 1971 when Dr. Kissinger told the DRV that the U.S. would agree to a deadline for the withdrawal of all U.S. forces in exchange for a ceasefire and the release of U.S. POWs. Both proposals envisioned the return of U.S. POWs prior to the withdrawal of American troops. North Vietnam, on the other hand, was insisting that POWs be returned after U.S. troops had been withdrawn.

In July, 1971, the DRV proposed that the prisoner release occur concurrently with the U.S. troop withdrawal. This concept was accepted by the U.S. side and was incorporated in subsequent proposals. Gradually, the period for the combined troop withdrawal/prisoner release was negotiated down from the six months proposed by the U.S. in October, 1971 to the 60 days of the final agreement.

### *Exchange of lists*

The timing of the exchange of POW lists was an important issue because the United States had ample reason to question whether the North Vietnamese would provide a complete and accurate list.

One reason for concern about the likelihood of DRV trustworthiness on the issue of returning POWs stems from the experience of France after its defeat at Dien Bien Phu in 1954. Although the 1954 Geneva Accords called for the release of all prisoners of war and civilian detainees, more than 20,000 French Union Forces have never been accounted for. Because of disputes between the Viet Minh guerrilla forces and the French about the evacuation of prisoners captured at Dien Bien Phu, a large number of the French POWs were forced to march 600 kilometers to their point of release. General Vernon Walters told the Committee that a senior intelligence officer in the French Army with whom he had spoken characterized this as "a death march" during which many POWs died. General Walters said that the French officer had told him that "something like half the prisoners that were known to have been captured alive never came back to France after they reached a deal with the Vietnamese." The vast majority of the known French Union prisoners who were not returned, more than 9000,



were Vietnamese Army personnel who had been allied with the French.

A second reason for serious American concern about whether the DRV would meet obligations entered into with respect to the POW issue arose after the release of a supposedly comprehensive list of U.S. POWs in December 1970. The list, which was given to U.S. Senator Edward Kennedy, included 368 names, with 339 listed as live prisoners and 29 as having died in captivity. The U.S. quickly and repeatedly characterized the list as incomplete because it excluded prisoners captured outside of North Vietnam and because it did not include some Americans thought to have been captured alive by the DRV.

On April 6, 1971, G. Warren Nutter, Assistant Secretary of Defense for International Security Affairs, told the House Foreign Affairs Committee that:

We cannot accept the list as definitive . . . we . . . know that the other side holds or has held many men not included on the list.<sup>37</sup>

He also said in response to a question about what the United States would seek in negotiations in return for troop withdrawal:

. . . let me suggest to you some of the problems we have. We don't even know the names of all our prisoners yet. We would have to negotiate on that question. We would have to get a list that would be definitive.<sup>38</sup>

On January 20, 1972, Heyward Isham, acting head of the U.S. delegation to the Paris meetings criticized the DRV for characterizing the list as "complete and final" despite clear evidence that you have further information which you could provide." Ambassador Isham then listed the cases of 14 downed airmen "who were known to have been alive on the ground in North Vietnam, or who were at one time actually identified by you as having been captured. None of these men appear on your so-called 'complete' list."<sup>39</sup>

Secretary of Defense Melvin Laird was also active during this period in denouncing the inadequacies of the December 1970 list and in highlighting the cases of Americans believed to be POWs who were not included in that list. Secretary Laird specifically urged Dr. Kissinger to question the DRV concerning the shortcomings of the December 1970 list and to insist on an exchange of lists prior to the signing of a peace agreement. Secretary Laird expressed confidence in his testimony before the Select Committee that his advice on these matters had been heeded:

I'm sure they were asking for specific names and numbers. They had the various lists that the North Vietnamese had been putting out, which were incomplete. (135)<sup>40</sup>

In reality, the timing of the exchange of lists was one of the first POW-related issues settled during the negotiations. During the Kis-

<sup>37</sup> House Foreign Affairs Committee hearing, April 6, 1971.

<sup>38</sup> Ibid.

<sup>39</sup> Isham testimony before House Foreign Affairs Committee, September 28, 1972, p. 138.

<sup>40</sup> Select Committee hearing, September 21, 1992.

singer-Le Duc Tho meeting on August 16, 1971, the DRV proposed that "the two sides will produce the complete lists of military personnel and civilians captured during the war on the day an agreement is signed."<sup>41</sup> This formulation was accepted by the U.S. side and thereafter appeared—in substantially identical form—in proposals by both sides and in the final agreement. Despite the concerns expressed at the time by Secretary Laird and others about whether the DRV could be trusted on this issue, the U.S. side made no effort to re-open the matter in later negotiations or proposals.

During his testimony before the Select Committee, Dr. Kissinger expressed the view that the U.S. lacked the leverage at the time of the negotiations that would have been necessary to gain DRV agreement to an earlier exchange of lists. He also cited the repeated and unsuccessful efforts by the U.S. during the public peace negotiations to obtain a complete list of U.S. prisoners.

#### *Linkage to release of civilian prisoners*

One of the most difficult issues facing the negotiators concerned the possible release of civilians detained by the Thieu Government in South Vietnam. To the DRV and Viet Cong, these were the equivalent of prisoners of war. The Government of South Vietnam, however, considered many of these prisoners to be either common criminals or political criminals who had violated the law through subversive activity. In neither case, argued the South Vietnamese, should these prisoners be treated the same as POWs.

Dr. Kissinger and other U.S. negotiators were determined to avoid linking the release of U.S. POWs to the complex questions involved in negotiating the release of the civilians in the south. They feared, quite logically, that such linkage would leave U.S. prisoners hostage to what would certainly be a highly contentious negotiating process between competing factions in South Vietnam. This issue of linkage was a frequent topic of discussion during the secret talks until October 1972, when the U.S. persuaded the North Vietnamese to leave the issue for the GVN and PRG to decide. In mid-December, however, the DRV reversed field by demanding that the release of the civilians in the south occur at the same time as the release of the U.S. POWs. This demand was a contributing factor to the President's decision to break off negotiations and begin the Christmas bombing. The DRV reverted to its October position when negotiations resumed in January, however, and the agreement to leave the issue to be worked out between the GVN and the PRG was incorporated in the accords as article 8(c).

#### *Application to prisoners captured outside Vietnam*

The most difficult task for U.S. negotiators was to attempt to gain an accounting for U.S. prisoners who were captured or held in Laos or Cambodia. Although North Vietnamese troops were active in both countries, the DRV would not admit this in negotiations. Time and again, North Vietnamese negotiators insisted that it was beyond their sovereign power to ensure the return of prisoners from Laos or Cambodia.

<sup>41</sup> Memorandum of Conversation, with Xuan Thuy, Vo Van Sung, Phan Hien, and Henry Kissinger, Paris, August 16, 1971.

U.S. negotiators stressed their concern not only that the accord apply specifically to U.S. prisoners throughout Indochina, but that a mechanism to account for the missing throughout the region also be established. As Dr. Kissinger noted in a cable to President Nixon on August 19, 1972, following a meeting a day earlier with Le Duc Tho, the U.S. position was that the agreement "had to include all men, and *account for all missing*, throughout Indochina."<sup>42</sup>

Almost to the end, the draft negotiating proposals of the two sides reflected the different positions. For example, on September 15, 1972, the DRV proposed:

The total release of people of the parties, military men and civilians, captured during the Vietnam war (including American pilots captured in North Vietnam) . . . The parties will exchange the lists of people of the parties captured during the Vietnam war. . . .

The U.S. counterproposal, on the other hand, called for:

The release of all military men and innocent civilians captured during the Vietnam war *throughout Indochina* including American servicemen captured in North Vietnam . . . The parties will exchange complete lists of the military men and innocent civilians captured during the Vietnam war *throughout Indochina* on the day of the signing of the overall agreement. As part of the overall agreement, there will be provision for verification of those still considered missing in action *throughout Indochina* after POW lists have been exchanged.

At the session on September 26, 1972 Dr. Kissinger and Le Duc Tho had the following exchange:

DR. KISSINGER. There is one point about which I can leave no doubt in your mind. The President will under no circumstances sign an agreement that leaves any American prisoners anywhere in Indochina. There would be no support in America whatsoever for any arrangement that drew a distinction between American prisoners that are held in Vietnam and American prisoners that are held in Laos and Cambodia. Now the modalities by which this may be achieved or the language that is used to express it is of course subject to negotiation . . .

LE DUC THO. So you mean by that there is a difference between reality and language?

Kissinger: If we have assurances that all American prisoners held in Indochina will be returned as a result of the agreement, then we can negotiate about the language that expresses that reality. It is conceivable to me, for example—and I am speaking here without precise authority, but if we want to make rapid progress I have to say things sometimes and then check it in Washington—that your

<sup>42</sup> Dr. Kissinger, Memorandum to the President, August 19, 1972.

allies could turn over their prisoners to you and then you return all prisoners to us.

LE DUC THO. As I told you last time that the American prisoners in Cambodia, there are none. In Laos, there are very few. But if you satisfactorily solve the political question and the question of reparations then we can find an understanding. But it is a question under the competence of Laos and Cambodia, and we have to exchange views with them. And moreover, this cannot be written down in a signed document.<sup>43</sup>

The following day, Dr. Kissinger cabled General Haig that the DRV's refusal to include formal provisions concerning Laos and Cambodia in a draft agreement remained "a major issue" of disagreement between the two sides.<sup>44</sup>

When it became clear in early October, however, that the DRV would not insist on President Thieu's resignation before agreeing to peace, momentum for an agreement increased. Accordingly, the U.S. side adopted the more flexible approach hinted at by Dr. Kissinger during the September 26 meeting by ceasing to insist on a formal Laos/Cambodia POW/MIA provision and pressing instead for a less formal understanding between the two sides on the issue.

On October 20, 1972, President Nixon sent a secret cable to DRV Prime Minister Pham Van Dong urging him to agree to make the following "unilateral declaration":

With respect to U.S. military men and civilians held in Indochinese countries outside of Vietnam, the DRV undertakes to make arrangements for their identification and return to the United States authority in accordance with the same schedule established for the release of U.S. military men and civilians detained in Vietnam. The DRV will also assure that the provision in the overall agreement for the verification of those U.S. military men and civilians considered missing in action will be applied also in Laos and Cambodia.<sup>45</sup>

Prime Minister Pham Van Dong did not agree to make such a far-reaching declaration. Instead, he replied the next day as follows:

In order to show its good will, the Government of the Democratic Republic of Viet Nam wishes to make clear its viewpoint regarding the unilateral statements mentioned by the United States in its message of October 20, 1972 as follows:

(a) Concerning the understandings on the part of the Democratic Republic of Viet Nam as mentioned during the private meetings in September and October of the current year, the DRV side will carry out, without any change, what it has declared to the U.S. side. But it should be made clear that the questions of Laos and Cambodia must be settled in accordance with the sovereignty of these two

<sup>43</sup> White House Memorandum of Conversation, between Le Duc Tho and Kissinger, Paris, September 26, 1972.

<sup>44</sup> Cable from Dr. Kissinger to Gen. Haig, 9/27/72.

<sup>45</sup> Cable from President Nixon to DRV Prime Minister Pham Van Dong, October 20, 1972.

countries. . . However, the Democratic Republic of Vietnam will do its utmost to come to an agreement with its allies, with a view of finding a satisfactory solution to the questions with which the United States is concerned. The DRV side is of the view that certainly the ending of the war in Vietnam will positively contribute to rapidly restoring peace in Laos and Cambodia. . . The Lao Patriotic Front has informed the DRV side that it is ready to agree with the other side on a ceasefire in Laos within one month of October 31, 1972 or within a shorter period of time, and that the Americans captured in Laos will be promptly released, before December 30, 1972.<sup>46</sup>

It is clear from this record that Pham Van Dong continued to insist, as the North Vietnamese had throughout the secret talks, that Laos/Cambodia issues were beyond DRV control, that the release of U.S. prisoners in Laos would be contingent upon a ceasefire in that country and that the timing would not necessarily be the same as that in Vietnam. The DRV leader also failed to address explicitly the issue of accounting for MIAs—as opposed to the release of prisoners—in either Laos or Cambodia.

Despite the differences, President Nixon cabled back on October 22 that:

The President notes with appreciation the message from the Prime Minister of the DRV which satisfies all his points with respect to Laos and Cambodia as well as U.S. prisoners.<sup>47</sup>

In his memoirs, President Nixon summarized the exchange as follows:

The North Vietnamese were now clearly determined to get an agreement. . . . Only the matter of the unilateral declarations, which included the arrangements for a ceasefire and the return of American POWs in Laos and Cambodia, still had to be clarified. . . . On October 21, the North Vietnamese replied by accepting our position on unilateral declarations.<sup>48</sup>

Although the President had expressed satisfaction with the October 21, 1972 correspondence from Pham Van Dong, the U.S. did not leave the issue there when negotiations resumed in January, 1973, after the Christmas bombing. Instead, Dr. Kissinger pressed Le Duc Tho for a direct assurance that U.S. prisoners in Laos would be returned within the same 60 day time period as other prisoners covered by the Accords. On January 9, he succeeded. On that date, Le Duc Tho assured Dr. Kissinger for the first time that U.S. prisoners captured in Laos would be returned within the same time frame as those captured in Vietnam. Le Duc Tho repeated his statement that there were no live U.S. POWs in Cambodia. To sum up, the U.S. had finally succeeded, two weeks prior to the initialing of the agreement, in obtaining a verbal commitment from North

<sup>46</sup> Cable from Pham Van Dong to Nixon, October 21, 1972.

<sup>47</sup> Cable from Nixon to Pham Van Dong, October 22, 1972.

<sup>48</sup> Nixon memoirs, p. 695.

Vietnam that U.S. prisoners detained in Laos would be returned within 60 days. In a cable on January 11, Dr. Kissinger characterized the understanding as providing "ironclad guarantees on our prisoners in Laos and Cambodia."<sup>49</sup>

A potential problem in enforcing these guarantees was raised just nine days later, on January 20, in a cable to Dr. Kissinger from U.S. Ambassador to Laos, McMurtrie Godley. The cable indicates that the timing of the release of U.S. POWs in Laos would depend, at least from the perspective of the Pathet Lao (LPF), on the negotiation and implementation of a ceasefire with the Royal Lao Government (RLG)—not on any timetable established under the Paris Peace Accords. The cable reads:

During General Haig's visit to Vientiane on Thursday, January 18, I forgot to raise with him the link which both the RLG and LPF have established in their draft agreements between the release of prisoners and the withdrawal of foreign forces from Laos. Both draft agreements are identical and state: "The interested parties will proceed with the turnover of all military and civilians captured or imprisoned during the war, regardless of nationality, according to modalities adopted by common agreement. This exchange will begin and end at the same time as the withdrawal from Laos of all foreign troops and foreign military personnel."<sup>50</sup>

At the time the Paris accords were signed, the U.S. and DRV understood that the cease-fire in Laos would take place within 15 days following the signing of the Paris agreement. In fact, the ceasefire agreement was signed on February 21, 1973, but the protocols implementing the POW reporting provisions were not signed until September 14 and implementation of prisoner exchanges by the two Lao parties did not begin until the following April.

Despite the uncertainties about the timing of the Laos ceasefire, Nixon Administration officials were publicly upbeat about the enforceability of the agreement. At a White House meeting on January 26, Dr. Kissinger told representatives of the National League of Families that he did not "foresee any special problems . . . we have absolute assurance that all American prisoners of war held anywhere in Indochina will be released. The North Vietnamese know that one condition on which we have not compromised is the issue of our men. We will brutally enforce the return of these men." When asked about the anticipated prisoner lists, Dr. Kissinger replied that "We will not accept them as complete or as definite. However, we also do not believe they will hide any POWs."<sup>51</sup>

In his testimony before the Select Committee in 1992, NSC staffer Winston Lord discussed the difficulties of gaining truly reliable guarantees from North Vietnam with respect to missing U.S. servicemen in Laos and Cambodia:

<sup>49</sup> Cable from Kissinger to Ambassador Bunker, January 11, 1973.

<sup>50</sup> Cable from Amb. Godley to Kissinger, January 20, 1973.

<sup>51</sup> Memorandum of Conversation, Kissinger to representatives of the National League of Families, January 29, 1973.

The general problem we had with Laos and Cambodia in negotiating this agreement. Hanoi wanted to maintain the fiction that it had no control over its friends in those other two countries, that they were sovereign governments. In retrospect, with respect to Cambodia, that turned out to be largely true. In fact, Vietnam invaded Cambodia a few years later, so they clearly didn't have control over the Khmer Rouge and some of the other elements.

But they certainly had large control in Laos, so our dilemma was to try to make this agreement as airtight as we could throughout Indochina, including on the POW/MIA question. And we came up with, frankly, compromises that were not fully satisfactory, of unilateral statements and so on . . .

We didn't get everything we wanted, including the Laos and Cambodia dimensions were clearly not as good as we would have liked . . . the final agreement was certainly not airtight.<sup>52</sup>

#### *The issue of U.S. aid*

The concept of U.S. contributions to postwar reconstruction in Southeast Asia was first raised by President Lyndon Johnson in a speech at Johns Hopkins University on April 7, 1965. Regular, albeit general, references to such aid were made later by officials both of the Johnson and Nixon Administrations.

The DRV made it clear during the secret talks that U.S. economic assistance was essential to any agreement reached between the two sides. During testimony before the Montgomery Committee in 1976, Under Secretary of State Philip Habib, who had attended some of the secret negotiating sessions during the war as a member of Dr. Kissinger's staff, noted:

In one of the first lists of negotiating points put forward by the North Vietnamese, the Communist side bracketed the release of prisoners with what they described as "U.S. responsibility for war damage in Vietnam" in a single numbered point . . . I know of no instance in which an adversary so openly treated this humanitarian problem in this way. We recognized from an early date what we were up against.<sup>53</sup>

Also, the following exchange took place during the Select Committee's deposition of Ambassador Vernon Walters:

Q: Was there ever any effort by the North Vietnamese that you were aware of to link the subject of our payments to them with the release of our prisoners?

A: Reparations were sine qua non for peace, return the prisoners for everything.

Q: From the North Vietnamese perspective, you mean?

A: Yes.<sup>54</sup>

<sup>52</sup> Lord testimony, September 21, 1992.

<sup>53</sup> Montgomery Committee hearings, July 21, 1976.

<sup>54</sup> Deposition of Vernon Walters, September 1, 1992, pp. 33-34.



The clearest indication that the North Vietnamese continued to link POW/MIA provisions with a commitment for U.S. aid during the latter stages of negotiations occurred on September 26, 1972. During a negotiating session on that date, Dr. Kissinger asked for assurances that all American prisoners, including those in Laos and Cambodia, would be returned as a result of the agreement. Le Duc Tho responded by saying:

If you satisfactorily solve the political question and the question of reparations, then we can find an understanding.<sup>55</sup>

As Dr. Kissinger and Ambassador Winston Lord both testified to the Committee, the U.S. understood that the DRV would not have signed an agreement in January 1973 in the absence of an American commitment to contribute to postwar reconstruction throughout Indochina. Nevertheless, there was a good deal of haggling over the possible amounts. The DRV continually upped its demands based on the ongoing damage being inflicted by U.S. bombing. In addition, the North Vietnamese referred to the possible aid as "reparations," while the U.S. side insisted that it be referred to as "reconstruction aid." Finally, Dr. Kissinger argued for a provision that was as vague as possible, while the DRV wanted a specific and binding commitment.

Article 21 of the PPA provides that:

The United States anticipates that this Agreement will usher in an era of reconciliation with the Democratic Republic of Vietnam as with all the peoples of Indochina. In pursuance of its traditional role, the United States will contribute to healing the wounds of war and to postwar reconstruction of the Democratic Republic of Vietnam and throughout Indochina.

The inclusion of Article 21 caused considerable controversy in the United States. As described in pages 114-117 of the Montgomery Committee report, Dr. Kissinger and other Administration officials denied at the time and for years afterwards that any negotiations or agreements concerning specific amounts of aid had been conducted.

These denials occurred notwithstanding a secret letter from President Nixon to DRV Premier Pham Van Dong that was hand-delivered on February 1, 1973, four days after the agreement was signed. The letter, which reflected an understanding reached between Dr. Kissinger and Le Duc Tho during the January negotiations, included the following U.S. commitments:

1. The Government of the United States of America will contribute to postwar reconstruction in North Vietnam without any political conditions.
2. Preliminary U.S. studies indicate that the appropriate programs for the U.S. contribution to postwar reconstruction will fall in the range of \$3.25 billion of grant aid over 5 years. Other forms of aid will be agreed upon between the two par-

<sup>55</sup> Transcript, Kissinger-Le Duc Tho negotiations, Paris, September 26, 1972.



ties. . . . 3. The U.S. will propose to the DRV the formation of a Joint Economic Commission. . . . 4 to develop programs for the U.S. contribution to reconstruction of North Vietnam. . . .

In regard to other forms of aid, U.S. studies indicate that the appropriate programs could fall in the range of 1 to 1.5 billion dollars. . . .<sup>56</sup>

A separate codicil to the letter contained the heading "Understanding Regarding Economic Reconstruction Program." It referred to the recommendations of the Joint Economic Commission "mentioned in the President's note" being implemented by each member "in accordance with its own constitutional provisions."

The record of negotiations supports Dr. Kissinger's contention that he repeatedly informed the DRV that any reconstruction assistance would have to be approved by the U.S. Congress and could not be guaranteed by the Executive Branch acting alone.

Another important issue relating to President Nixon's promise of aid is whether it was meant to be linked with any of the POW/MIA provisions of the agreement and associated understandings. During the course of the secret talks, Dr. Kissinger stated consistently the U.S. position that reconstruction aid was a humanitarian matter that stood alone. In the September 26, 1972 exchange cited above, however, Le Duc Tho explicitly linked the resolution of the issue concerning U.S. POWs in Laos to "the political question and the question of reparations."

It seems, given this record, that the U.S. and DRV took mirror image views of the relationship between the promise of American aid and the release of POWs in Laos. It was the U.S. position that the prisoners must be released whether or not aid was forthcoming. The DRV's preferred position was that aid be forthcoming whether or not prisoners were released. Although U.S. negotiators successfully avoided any linkage of the issues in the agreement, they obviously could not prevent DRV officials from subsequently raising the issue of aid in response to U.S. demands that they comply more fully with the POW/MIA provisions of the accords.

### *The agreement*

The Paris Peace Accords consisted of the Agreement to End the War and Restoring Peace in Vietnam and four protocols including one on prisoners and detainees. On the military side, the Agreement provided for an immediate ceasefire, the simultaneous withdrawal of all U.S. forces and return of military and civilian POWs within 60 days of the signing, and a prohibition on the introduction of troops, military advisers or personnel into South Vietnam during the 60 day period. It also allowed the GVN and PRG to replace worn out military equipment and materiel after the ceasefire and established military commissions to oversee implementation of the military provisions.

With respect to political issues, the Agreement provided for the exercise of the right of self-determination by the South Vietnamese people, the formation by the PRG and the GVN of a National

<sup>56</sup> Nixon letter to Pham Van Dong, February 1, 1973.

Council to organize free and democratic elections, the reunification of Vietnam by peaceful means, and a U.S. commitment to contribute to the postwar reconstruction of Indochina, including Vietnam.

Provisions for the release of prisoners and accounting for MIAs were contained in Chapter III, Articles 8(a) and 8(b):

#### ARTICLE 8

(a) The return of captured military personnel and foreign civilians of the parties shall be carried out simultaneously with and completed not later than the same day as the troop withdrawal mentioned in Article 5. The parties shall exchange complete lists of the above-mentioned captured military personnel and foreign civilians on the day of the signing of this Agreement.

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

The responsibility for implementing article 8 during the 60 day simultaneous prisoner release/troop withdrawal period was delegated to a Four Party Joint Military Commission (FPJMC) and its subcommission on captured persons. Thereafter, a Four Party Joint Military Team (FPJMT) would assume responsibility for accounting for MIAs.

In addition to Article 8, the Agreement included a Protocol on Prisoners and Detainees. The Protocol specified the terms of prisoner release including—among other things—the immediate, complete exchange of lists of captured persons; the return of prisoners at a rate no slower than the rate of withdrawal of the remaining U.S. forces; a requirement that captured persons be treated humanely; permission for Red Cross visits to all places of detention within 15 days; and a requirement that the return of prisoners not be delayed or prevented for any reason, including a possible conviction for war crimes.

With respect to Laos, State Department Deputy Legal Adviser George Aldrich authored a memorandum following the signing of the agreement that noted:

The DRV has assured us that, although not covered by the agreement, 'all U.S. military and civilian prisoners detained in Laos shall be released no later than 60 days following the signature of the agreement.' The DRV has also assured us that it would be responsible for making the necessary arrangements with the Pathet Lao.

Article 8(b) of the agreement concerning the account for missing in action and the location of graves does not apply to Laos. Similarly, the functions of the Four Party Joint Military Commission with regard to dead and missing persons under article 10(a) of the protocol on the return of prisoners, do not extend to Laos. Therefore, it will be nec-

essary to conclude further arrangements for tracing the missing and finding graves in Laos.<sup>57</sup>

Article 20 of the Agreement was intended to pave the way for a regionwide cease fire and withdrawal of foreign forces:

(a) The parties participating in the Paris Conference on Vietnam shall strictly respect the 1954 Geneva Agreements on Cambodia and the 1962 Geneva Agreements on Laos, which recognized the Cambodian and the Lao peoples' fundamental national rights, i.e., the independence, sovereignty, unity, and territorial integrity of these countries. The parties shall respect the neutrality of Cambodia and Laos.

The parties participating in the Paris Conference on Vietnam undertake to refrain from using the territory of Cambodia and the territory of Laos to encroach on the sovereignty and security of one another and of other countries.

(b) Foreign countries shall put an end to all military activities in Cambodia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisers and military personnel, armaments, munitions and war materiel. . . .<sup>58</sup>

Also of interest is Article 21, cited above, which contains a general U.S. commitment to "contribute to healing the wounds of war and to postwar reconstruction of the Democratic Republic of Vietnam and throughout Indochina."

Finally, Article 22 of the Agreement stated:

The strict implementation of this agreement will create conditions for establishing a new, equal, and mutually beneficial relationship between the United States and the Democratic Republic of Vietnam on the basis of respect for each other's independence and sovereignty, and non-interference in each other's internal affairs.

#### IMPLEMENTATION OF THE ACCORDS: THE FIRST SIXTY DAYS

##### *General expectations*

Given the uncertainties of war, the failure of North Vietnam previously to provide what the U.S. considered a complete list of captured Americans, and the prior unwillingness of communist forces in Laos, Cambodia or South Vietnam to provide any list at all, estimates of the likely number of Americans to be returned when the Agreement was finalized varied widely.

On the day the agreement was signed, the DIA listed 667 American military and civilian personnel as POW and 1,986 as Missing in Action. There was not enough certain knowledge behind these apparently precise numbers, however, to justify confident predictions as to the number of Americans who would be coming home.

<sup>57</sup> Memorandum, George Aldrich, Deputy Legal Adviser, Department of State, January 27, 1973.

<sup>58</sup> Article 20, Paris Peace Accords.

Between 1970 and January, 1973, when the PPA was signed, the Nixon Administration had mounted a public campaign around the POW issue to rally U.S. public support and to put pressure on the DRV. During this period, both President Nixon and Secretary of Defense Laird referred to "1600" American POWs and Congress approved a Resolution, with Administration backing, calling for the release of the "1500 American servicemen . . . imprisoned by Communist forces in southeast Asia."<sup>59</sup>

The Committee conducted a deposition of Col. Lawrence Robson, whose responsibilities as a staff member to the Military Assistance Command in Vietnam included the maintenance of files on servicemen who had been lost. Col. Robson recalls a meeting of service representatives at CINCPAC headquarters in Hawaii in August, 1972 in which the estimated number of returnees varied from 400 to 1600.

General Eugene Tighe told the Committee that Admiral Gayler, CINCPAC, had received a tasking from the JCS in the summer of 1972 to work with the service intelligence agencies to compile as complete a list of potential POWs as possible. The goal, said General Tighe in testimony before the Select Committee, was:

To compile a list, by military service, of the names . . . of each missing individual of which sufficient intelligence and other data was available to reasonably expect that he had survived and would be returned on successful conclusion of the Paris negotiations.

The standards we used for determining whether to show a missing individual on the list or not as an anticipated returnee may have been more liberal or less than those used elsewhere. I have no way of knowing. They were intended to be as accurately anticipatory as humanly possible.<sup>60</sup>

General Tighe remembers that the list compiled by CINCPAC contained from 900-1000 names and was sent to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. Unfortunately, the Select Committee has not been able to locate any record of the list.

Admiral Thomas Moorer, Chairman of the JCS from 1970-1974, told the Committee that the range of expected returnees, to the best of his recollection, was between 400 and 600, with the possibility of going as high as 1100, given the uncertainties. Admiral Moorer attributed the differences in expectations at this point to differences in criteria used to place names on the various lists.

#### *Expectations with respect to Americans lost in Laos*

The confident assurances provided by the President and Dr. Kissinger with respect to the return of prisoners throughout Indochina were particularly encouraging to the families of American airmen downed in Laos. In January, 1973, DIA listed 354 Americans as MIA in Laos, but only 12 as POW. The most tangible evidence of live U.S. POWs, such as letters to family members and the ac-

<sup>59</sup> "Missing or Dead?—Some "POW" Relatives Say They Are Misled by American Officials"; *Wall Street Journal*, September 30, 1971.

<sup>60</sup> Select Committee hearing, June 24, 1992.

knowledge of the enemy that particular individuals were being held, was lacking in Laos. But the large number of airmen downed but not confirmed dead, coupled with a variety of other indications, gave grounds for hope that a significant number of those captured in Laos might be coming home.

William Sullivan, U.S. Ambassador to Laos from 1964 until 1969, recalls receiving information during that time indicating the possible or probable capture of "around 10" U.S. airmen. He told the Committee "I got the sense that it (total U.S. prisoners in Laos) was not a large number. That is . . . less than twenty." According to the Ambassador, the U.S. believed that the prisoners were being held at two locations, Xianghoang and Sam Neua, both of which he said were under the control of the North Vietnamese.<sup>61</sup>

In May, 1970, Mr. Sullivan, now Deputy Assistant Secretary of State for East Asian and Pacific Affairs, told the House Foreign Affairs Committee that "most Americans captured by Communist forces in Laos remain in Laos."<sup>62</sup>

Mr. Sullivan's successor as Ambassador to Laos, McMurtrie Godley, was less certain in his testimony about the possible presence of U.S. POWs in Laos. He told the Committee that:

The only reliable sources we had about MIAs or POWs were, of course, Air Force reports as to losses over Laos and Air America, which lost several men in Northern Laos. . . .

We had, in Vientiane, a special team interrogating many Pathet Lao and North Vietnamese prisoners about American prisoners or MIAs. The information we gathered was not, however, hard proof, but you might say collateral information. . . .<sup>63</sup>

Ambassador Godley and Mr. Ross Perot gave the Committee conflicting accounts of Mr. Perot's visit to Vientiane in April, 1970. Mr. Perot and two associates remember receiving a briefing from the CIA indicating that U.S. prisoners were being held by the Pathet Lao. Although Mr. Perot did not remember the exact number, his associates recall the number as 26 or 27. Neither Ambassador Godley nor the CIA station chief who allegedly provided the briefing recall the meeting, nor do they confirm that the U.S. had solid intelligence of that many prisoners being held in Laos. However, a former U.S. Embassy officer in Vientiane, James Murphy, recalled during his deposition to the Committee that he had, in fact, escorted Mr. Perot to a meeting with the CIA station chief at the U.S. Embassy.

The extent of roughly contemporaneous U.S. intelligence information is reflected in an April 17, 1974 memorandum prepared by the DIA for the various armed service intelligence agencies. According to the memo, "it is clear that the Pathet Lao had captured some U.S. personnel." Among these were Mr. Eugene DeBruin, a civilian, and Lt. Col. David Hrdlicka, USAF. Photographs of both

<sup>61</sup> Deposition of Ambassador William Sullivan to the Select Committee.

<sup>62</sup> Hearing, Subcommittee on National Security Policy and Scientific Developments, House Committee on Foreign Affairs, April 29, May 1 and 6, 1970, p.100.

<sup>63</sup> Select Committee hearing, September 24, 1992.

men in captivity had appeared in Pathet Lao publications. Pathet Lao spokesman Soth Petrasy had acknowledged in May, 1966 that the LPF were holding Mr. DeBruin and that he was in good health.<sup>64</sup>

**Pathet Lao Statements.** Although the statements were later to be recanted, other LPF statements made prior to Operation Homecoming heightened U.S. expectations concerning the release of prisoners, as well. For example, in September, 1968, Soth Petrasy told a U.S. official that "pilots are generally kept near the area in which their plane is downed and therefore may be found throughout Laos from the south to the north."<sup>65</sup>

In April 1971, Prince Souphanouvong, Chairman of the LPF Central Committee, made the following statement concerning prisoners:

The LPF has made public a concrete policy toward enemy soldiers or agents captured or giving themselves up, including GIs. All the American pilots engaged in bombings or toxic chemical sprays on Lao territory are considered criminals and enemies of the Lao people. But once captured, they have been treated in accordance with the humane policy of the LPF. The question of enemy captives, including U.S. pilots, will be settled immediately after the U.S. stops its intervention and aggression in Laos first, and foremost, end the bombing of Laos territory.<sup>66</sup>

— According to a September 30, 1971 report in the *Wall Street Journal*:

The Pathet Lao, a Hanoi ally not represented at the Paris Peace Talks, indicate only that they will "discuss prisoners when the U.S. pulls out of Laos." (Mrs. Stephen Hanson, whose husband a Marine captain, was seen alive on the ground after his helicopter was shot down over Laos, says a high-ranking U.S. diplomat confided to her that there were "70 or 80" U.S. prisoners in Laos. State Department officials, however, say intelligence sources indicate the possibility of "around 30 men, and that's low-level stuff—things like reports of Caucasians spotted on the Ho Chi Minh trail."<sup>67</sup>

In February, 1972, Soth Petrasy told an interviewer that "some tens of prisoners are presently being held" by the Pathet Lao.<sup>68</sup>

In April, 1972, Soth told the press that U.S. airmen were being detained in various caves in northern Laos.<sup>69</sup>

These types of statements continued until as late as February 19, 1973, more than three weeks after the PPA was signed, when Soth said that the Pathet Lao had a detailed accounting of prisoners and where they were being held.<sup>70</sup>

<sup>64</sup> DIA Memorandum, April 17, 1974.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Wall Street Journal article cited above, September 30, 1971.

<sup>68</sup> DIA Memorandum, April 17, 1972.

<sup>69</sup> Ibid.

<sup>70</sup> UPI report, Soth Petrasy statement, February 19, 1973.

DIA Background Paper—1992. Toward the end of its investigation, the Committee was provided with a Defense Intelligence Agency Background Paper on Laos. According to that document:

Prisoners who were captured in Laos by the NVA (North Vietnamese Army) were immediately transferred to North Vietnam and detained there until the end of the war. Second, intelligence indicates that after 1968/9, all prisoners captured in Laos were turned over to the North Vietnamese Army for transport to North Vietnam, regardless of where they were captured or by whom.<sup>71</sup>

*January 27, 1973: The lists are exchanged*

Under the peace agreement, release of POWs and withdrawal of U.S. troops were to be completed within 60 days of the signing of the PPA, or by March 26. The responsibility for implementing these provisions was vested in a Four Party Joint Military Commission (FPJMC) headed, for the U.S., by General Gilbert Woodward. Reports from the U.S. delegation to the JMC were rendered directly to General Weyand, Commander of the Military Assistance Command, Vietnam (MACV), and copied to Dr. Kissinger, Admiral Moorer of the Joint Chiefs (JCS), and others. A POW subcommittee of the JMC was formed on January 30, 1973, headed for the U.S. by Col. B.H. Russell.

The primary objective of the U.S. delegation to the FPJMC was to obtain the return of American prisoners under both the terms of the agreement and the side understanding between the U.S. and DRV that U.S. POWs captured throughout Indochina would be returned. The unit's historian described the reason this way:

First, they were to ensure the return of the American prisoners of war. Given the reduced level of U.S. troop involvement in Vietnam by January, 1973, the return of prisoners was the major emotional motivating force for the Americans. It was probably also the only issue over which the United States could justify a renewal of bombing raids or other measures involving military force, should the North Vietnamese clearly demonstrate their intent to violate the provisions and understandings reached in Paris concerning the prisoner return. The return of the American captives was also a goal on which almost all Americans in Vietnam or at home, could agree.<sup>72</sup>

The lists of U.S. prisoners were placed in American hands shortly after noon, eastern standard time, on January 27. The lists from the DRV and the PRG included a total of 586 Americans to be returned, and 64 as having died in captivity. This left 80 Americans listed as POW (reduced to 73 after the DRV/Laos list was released on February 1), and 1,276 listed by DIA as MIA.

<sup>71</sup> Defense Intelligence Agency, background paper on "Laos and the 'Black Hole' Theory, p. 2 (undated).

<sup>72</sup> Dillard, Walter Scott, *Sixty Days to Peace. Implementing the Paris Peace Accords. Vietnam. 1973* National Defense University, Fort Lesley J. McNair, Washington, D.C., 1982, p. 59.



*Reaction: Disappointment and dismay*

The Select Committee was told by numerous witnesses that there was widespread disappointment, especially within the Department of Defense, about the number of names on the list. General Eugene Tighe, for example, remembers "shock and sadness at the paucity of the lists of names we received versus what we expected."<sup>73</sup> Similarly, Secretary of Defense Melvin Laird told the Committee that "I was disappointed with the list because I hoped that there would be more. . . ." <sup>74</sup>

U.S. officials were particularly distressed by the fact that the lists did not include any Americans who were believed held prisoner in Laos, although two Americans listed as MIA in Laos were on the list provided by the Viet Cong. The U.S. was certain that the DRV had information concerning at least some prisoners captured in Laos, because the DIA believed that at least a small number of Americans had been captured in Laos by the North Vietnamese and transferred to prison in Hanoi.

Families of missing Americans that were not included on the lists were also dismayed, especially concerning the lack of a list of prisoners captured in Laos. Mrs. Phyllis Galanti, chairman of the Board of the National League of POW/MIA Families, told the Associated Press on January 28, 1973 that "Everything we have been told led us to believe there would be a list." <sup>75</sup>

At a meeting of the WSAG Group on Jan. 29, Dr. Kissinger asked for the Defense Department's reaction to the lists:

Mr. KISSINGER: Were there any surprises in the list of POWs from North Vietnam?

JCS STAFF REPRESENTATIVE (name redacted). It was pretty close to what we expected. We're hoping for forty more on the list of those in Laos.

DEFENSE DEPT. REPRESENTATIVE (name redacted). Our list had 591 and the one they gave us consisted of 555 (refers to military POWs only), plus 55 who died in captivity. Some of the 555 were not on our lists, although not many. There remain 56 who were previously carried as POWs, but are not on either of the lists they gave us . . .

The information they have given us about prisoners in North Vietnam is quite accurate. We don't know what we will get from Laos. We have only six known prisoners in Laos, although we hope there may be forty or forty-one. We have known very little about the caves where they keep the prisoners in Laos. We just got the first photos of those caves recently and our impression is that they are pretty big. We think they are holding a lot more than six prisoners there.

STATE DEPT. REPRESENTATIVE (name redacted). We expect none from Cambodia?

JCS: They said there were none in Cambodia and we have no record of any there. <sup>76</sup>

<sup>73</sup> Select Committee hearing, June 24, 1992.

<sup>74</sup> Select Committee hearing, September 21, 1992.

<sup>75</sup> Associated Press, January 28, 1973.

<sup>76</sup> Transcript, WSAG meeting, January 29, 1973.



*American protests*

U.S. protests about the failure of the DRV to produce a list of POWs captured in Laos were raised immediately at meetings of the JMC and in direct communications between the American and North Vietnamese negotiating teams. On January 29, 1973 Deputy National Security Adviser Brent Scowcroft cabled the U.S. delegation to the peace talks in Paris that a letter from President Nixon to the DRV on the subject of reconstruction aid had been prepared, but that it should not be delivered until the DRV had produced a list of U.S. prisoners captured in Laos. After the DRV failed to produce the list at a meeting on January 30, a note was sent to Le Duc Tho the following day warning that the issue could jeopardize Dr. Kissinger's planned trip to Hanoi to discuss economic aid.

Finally, on February 1, the exchange of the letter from President Nixon and the list of prisoners captured in Laos took place. Col. George Guay, who made the exchange for the U.S. side, described it in a cable to Brent Scowcroft of the National Security Council staff:

I exchanged the President's memorandum for the list of U.S. prisoners in Laos . . . at 1600 (Paris time) today. When I arrived, he made a grab for the envelope containing the message and without breaking his fingers, I told him that my instructions were to exchange the memorandum for his list. He then said I could read his list while he read the memorandum and if we didn't like what we read we could return each other's papers. At this with a huge smile while he again reached for the envelope. I smiled in return and while picking up the envelope with both hands (tight grip) asked him if he had the list. . . . He went to a cabinet and produced an envelope from which we extracted what was obviously a very short list of names . . . there is a total of 10 people on the list, eight military and two civilians. . . . When he finished reading the memorandum, I asked him if that was the total list available. He replied that was all "they" gave him and that they (the NV) were attempting to establish procedures to verify the existing situation with the Pathet Lao. . . . I did not tell him that I felt like returning the list and taking back the memorandum until they displayed a more serious attitude. In all honesty, though, he did seem to be somewhat embarrassed when he said that was all "they" had given him.<sup>77</sup>

*Reactions to the DRV/Laos list*

As of February 1, 1973, 352 Americans were listed as MIA in Laos. Of these, two were on the list provided by the DRV. Of the 12 Americans listed as POW in Laos, three were on the list.

American officials were concerned by the small number of individuals on the DRV/Laos list, compared to the total number of U.S. servicemen unaccounted for in Laos. They were concerned, as well, by DIA's belief that the list appeared to consist entirely of prisoners captured by the North Vietnamese, not the LPF—even

<sup>77</sup> Cable from Col. Guay to Gen. Scowcroft, February 1, 1973.

though DRV officials claimed to have received the list from the LPF. Individuals like Eugene DeBruin and David Hrdlicka, who were known to have been taken captive by the Pathet Lao, were not included. In addition, the Laos list, unlike the DRV and PRG lists released on January 27, did not include the names of any Americans who had died in captivity.

President Nixon's Cable to Pham Van Dong. The official U.S. reaction to the Laos list was conveyed in a cable from President Nixon to Prime Minister Pham Van Dong on February 2nd:

The list of American prisoners held in Laos which was presented in Paris on February 1, 1973 is unsatisfactory. U.S. records show that there are 317 American military men unaccounted for in Laos and it is inconceivable that only ten of these men would be held prisoner in Laos.

The United States side has on innumerable occasions made clear its extreme concern with the prisoner issue. There can be no doubt therefore that the implementation of any American undertaking is related to the satisfactory resolution of this problem. It should also be pointed out that failure to provide a complete list of prisoners in Laos or a satisfactory explanation of the low number thus far presented would seriously impair the mission of Dr. Kissinger to Hanoi.<sup>78</sup>

There is no record in National Security Council or White House files of a specific response from the DRV to this cable, nor is there any indication of further U.S. threats to cancel Dr. Kissinger's trip to Hanoi because the North Vietnamese had not responded favorably. However, Col. Guay, who had personally delivered the cable from President Nixon to the DRV representative, characterized the DRV official's reaction in this way:

He said in effect that one should appreciate the difficulties involved in finding pilots who were downed in Laos. You must understand, he added, that we have the best of intentions as we have already proven during the negotiations, but there are real practical problems associated with the recovery of these people. There were instances where both sides searched in vain after an aircraft had been observed going down. The brush is a long way from civilization and Laos is scarcely populated. I replied that even under the worst conditions possible it was difficult to accept the fact that only ten people had been identified. That even on a percentage basis, he should understand it would be difficult for anyone to believe the figure presented. . . . He replied . . . we have not come this far . . . to hold on to a handful of Americans, after all what would that prove . . .<sup>79</sup>

As preparations continued for Dr. Kissinger's trip to North Vietnam, the Administration remained publicly dissatisfied with the Laos list. In testimony before the House Foreign Relations Commit-

<sup>78</sup> Cable from President Nixon to Pham Van Dong, February 2, 1973.

<sup>79</sup> Cable from Col. Guay to Gen. Scowcroft, February 2, 1973.

tee on February 8, for example, Secretary of State Rogers said that "we do not regard the Lao list as complete."<sup>80</sup>

#### *Dr. Kissinger's visit to Hanoi*

Prior to the signing of the peace agreement, Dr. Kissinger and Le Duc Tho had discussed the possibility of a visit by Kissinger to Hanoi for the purpose of dramatizing the peace agreement and initiating a process of postwar planning that would include substantial amounts of U.S. aid.

#### *Discrepancy cases*

In preparation for Dr. Kissinger's trip to Hanoi, the DIA prepared a list of 80 individuals, many of whom the agency listed as POW but who were not on the January 27 DRV or Viet Cong lists. In some cases, these were individuals who had been photographed or interviewed while in North Vietnamese custody. Others involved airmen whom the U.S. had reason to believe survived their incident and may have been taken into captivity. According to Dr. Roger Shields, Deputy Assistant Secretary of Defense, there were also some cases about whom the U.S. knew very little, but whose names were added in the hope that the DRV would provide information and also to test the good faith of the North Vietnamese. Folders on approximately 20 of the strongest cases accompanied Dr. Kissinger to Hanoi.

The DIA talking points prepared for Dr. Kissinger stressed the fact that the prisoners on the DRV/Laos list had been captured not by the Pathet Lao, but by the North Vietnamese. The DIA also stated that approximately 215 men from the 350 U.S. personnel missing in Laos "were lost under circumstances that the enemy probably has information regarding their fate."<sup>81</sup>

Accompanied by Deputy Assistant Secretary of State William Sullivan, Dr. Kissinger arrived in Hanoi on February 10 for three days of meetings with DRV leaders, including Pham Van Dong and Le Duc Tho. During a 3 and ½ hour meeting on the first day, Dr. Kissinger raised the issue of the U.S. POWs and a number of file folders were given to the North Vietnamese for the purpose of investigation. As Ambassador Sullivan recalled for the Committee:

I do recall that one of the cases involved, I believe a Navy Lieutenant Commander, Navy pilot, who had been shot down and had been photographed and used in a North Vietnamese propaganda photo.

And Dr. Kissinger pulled that out and we discussed this and used it as a sort of serious discrepancy which existed, and therefore merited more study. And we went through, I would say, a half dozen of them, but I don't think all of them . . .<sup>82</sup>

Dr. Kissinger recalls in his memoirs:

We knew of at least 80 instances in which an American serviceman had been captured alive and subsequently dis-

<sup>80</sup> House Foreign Affairs Committee hearing, February 8, 1973, p. 7.

<sup>81</sup> DIA Talking Points for Dr. Kissinger, Feb. 6, 1973.

<sup>82</sup> Select Committee hearing, September 21, 1992.

appeared. The evidence consisted either of voice communications from the ground in advance of capture or photographs and names published by the Communists. Yet none of these men was on the list of POWs handed over after the Agreement. Why? Were they dead? How did they die? Were they missing? How was that possible after capture? I called special attention to the 19 cases where pictures of the captured had been published in the Communist press. Pham Van Dong replied noncommittally that the lists handed over to us were complete . . .

We have never received an explanation of what could possibly have happened to prisoners whose pictures had appeared in communist newspapers, much less the airmen we knew from voice communications had safely reached the ground.<sup>83</sup>

Meanwhile, the two sides went ahead with discussions about reconstruction aid and announced the creation of a Joint Economic Commission which would receive and administer U.S. financial help. Dr. Kissinger told the Select Committee that it was his hope that:

After all this anguish of war . . . there might be a period in which they would turn to the reconstruction of their country and improving relations with the outside world, and if you look at the concluding statements that Le Duc Tho and I made off the top of our heads after a 20-hour negotiating session (the previous October), you will see that that was a dominant theme.

And in fact when I went to Hanoi in February, that was one of my hopes. I remember one of the newsmen accompanying me on the plane said, what you're really hoping for is that Pham Van Dong, who was then Prime Minister in Hanoi, would turn out to a Chou En-Lai, and I said that's right, that's what I would like to see happen.<sup>84</sup>

#### *Enforcing the Indochina understanding*

Although the release of American prisoners on the January 27 DRV and PRG lists was proceeding satisfactorily, the U.S. expectation that the DRV would guarantee the release of prisoners in Laos, based on the assurances provided to Dr. Kissinger by Le Duc Tho, was badly shaken. Despite U.S. protests, the DRV continued to promise only the release of a small number of prisoners who had not been held in Laos in the first place. No prisoners actually captured by the Pathet Lao were scheduled for release. The U.S. hoped, however, that the negotiation of a cease-fire between the contending factions in Laos might result in the release of U.S. prisoners even though the U.S. had reached no agreement on this subject with the Pathet Lao.

U.S. hopes were strengthened on February 17, 1973, when Pathet Lao spokesman Soth Petrasy told UPI that his group had "a detailed accounting of prisoners and where they are being held." He

<sup>83</sup> Kissinger memoirs, volume II, the White House Years, p. 34.

<sup>84</sup> Select Committee hearing, September 22, 1992.

also said, however, that prisoners captured in Laos would be returned in Laos—a sign that the LPF did not feel bound by DRV assurances provided to the U.S. under the PPA.<sup>85</sup>

*The Laos cease-fire agreement*

On February 21, the long anticipated cease-fire agreement between Royal Lao and Pathet Lao forces was signed. The pact called for the formation of a coalition government and the subsequent release within 60 days of all POWs, regardless of nationality, held by any side. (Although it was hoped at the time that the agreement would be implemented almost immediately, the coalition government was not formed until 14 months later.)

Also on February 21, Soth Petrasy insisted again that the issue of prisoners in Laos had not been settled by the Paris Peace Agreement. "Whatever U.S. and North Vietnam agreed to regarding prisoners captured in Laos is not my concern. The question of prisoners taken in Laos is to be resolved by the Lao themselves and cannot be negotiated by outside parties over the heads of the Lao."<sup>86</sup>

The day the Laos ceasefire agreement was signed, John Gunther Dean, Charge' at the U.S. Embassy in Vientiane, was told by Soth Petrasy that the Pathet Lao "does hold foreign prisoners, including Americans."

Dr. Kissinger, returning from China, then cabled to the U.S. Embassy in Vientiane suggesting that "Dean follow up his recent conversation with Soth by seeking detailed information concerning those (U.S. prisoners) held and by proposing arrangements for their early release."<sup>87</sup>

On March 13, the subject of U.S. POWs in Laos was discussed at a meeting of the WSAG in the White House:

STATE DEPT. REPRESENTATIVE (name redacted). You won't complete the withdrawal until the Lao prisoners are released?

KISSINGER. Yes, that's right.

DEFENSE DEPT. REPRESENTATIVE (name redacted). How many are there in Laos?

NSC STAFF (name redacted). They've told us they hold more American prisoners than the eight on the list we received from North Vietnam.

Kissinger. They have? They told us they hold more than eight?

NSC STAFF. That's right.

STATE. We've had contact with the Pathet Lao several times.

KISSINGER. And they have admitted they hold more?

STATE. Yes.

KISSINGER. I didn't know that. How many more?

STATE. They haven't said. They've been giving us the runaround on the details. This is something you may want to keep in mind. You may want to notify the DRV that the

<sup>85</sup> UPI report, Soth Petrasy statement, February 17, 1973.

<sup>86</sup> Soth Petrasy statement, February 21, 1973.

<sup>87</sup> Cable from Dr. Kissinger to Ambassador Godley.

Pathet Lao have told us this and ask them to be more forthcoming on POWs in Laos.

DEFENSE (to Kissinger). Will you handle this through your channel?

KISSINGER. Yes.<sup>88</sup>

The following day, the U.S. sent a message to the DRV asking for an explanation of the statements made by Soth Petrasy, but no response was received.

Also on March 14, 1973, President Nixon approved a recommendation from Dr. Kissinger to plan for a 2-3 day series of intensive U.S. air strikes against the Ho Chi Minh Trail in southern Laos to be conducted immediately after the third increment of POWs was released on March 16. Dr. Kissinger's rationale for the proposed bombing is described in a memorandum to the President as a "response to continued North Vietnamese infiltration and logistics activity in the South." Dr. Kissinger further proposed that the President's final decision be delayed until after the POW release and in anticipation of further developments.<sup>89</sup>

*The problem gets worse*

At this point, communications with both the DRV and the Pathet Lao on the issue of U.S. prisoners in Laos became even more difficult. In Saigon on March 19, the American delegate to the Prisoner of War Subcommittee of the FPJMC asked the DRV to explain when and where the Americans on the DRV/Laos list would be returned. The North Vietnamese replied that they had no authority to discuss the release of prisoners captured in Laos. During a coffee break, the Hanoi delegate approached the American representative and told him that the Pathet Lao were responsible for negotiating the release of any U.S. prisoners detained by them.<sup>90</sup>

The report of this meeting angered and alarmed Nixon Administration officials. On March 20, Dr. Kissinger dispatched the following cable to Pham Van Dong:

The U.S. side has become increasingly disturbed about the question of American prisoners held or missing in Laos. As the DRV side well knows, there is a firm and unequivocal understanding that all American prisoners in Laos will be released within 60 days of the signing of the Vietnam Agreement . . . in the past week there has been further evidence that the DRV and its allies are not taking their obligations seriously. Further conversations between U.S. and LPF representatives in Vientiane have proven completely unsatisfactory. Furthermore, on March 19, the DRV representative to the POW subcommittee informed the American representative that the Pathet Lao were responsible for the release of American prisoners and gave no assurance that this would take place by the agreed date of March 28, 1973. . . .

<sup>88</sup> Transcript, WSAG meeting, March 13, 1973.

<sup>89</sup> Memorandum to the President from Dr. Kissinger, March 14, 1973.

<sup>90</sup> Dillard, p. 92.

In addition, as the U.S. side has made clear on many occasions, the list of only nine American prisoners presented belatedly by the Pathet Lao is clearly incomplete. There continues to be no satisfactory explanation concerning the smallness of this list nor any assurances that further efforts will be forthcoming.

In view of the very short time left before the deadline for the release of American prisoners in Laos, the U.S. side expects an immediate response to this message and the firm assurance of the DRV side that it will live up to its solemn responsibilities. Failure to do so would have the most serious consequences. Certainly the U.S. side cannot be expected to complete its withdrawals from South Vietnam until this closely linked question is satisfactorily resolved.<sup>91</sup>

### *U.S. intelligence assessment*

The new DRV position on prisoners in Laos was clearly contrary to the assurances provided to Dr. Kissinger by Le Duc Tho. As a result, it invited a tough American response. On March 21, while Administration officials were considering what to recommend, acting DIA Director John R. Deane, Jr. sent a secret memorandum to Admiral Moorer concerning the intelligence community's view of the POW situation in Laos. General Deane wrote that the DRV's purported "Laos list" of February 1, 1973 was limited exclusively to U.S. POWs captured in Laos by the North Vietnamese and did "not represent U.S. POWs captured by the Pathet Lao." General Deane said it was the intelligence community's view that: "There is evidence that the Pathet Lao have information on captured/missing U.S. personnel and should be able to provide a list of alive PWs in addition to information on the fate of many others"<sup>92</sup>

General Deane's memo and other intelligence reports and analyses persuaded Admiral Moorer that it was "highly likely" that the Pathet Lao was holding live U.S. POWs in addition to the nine on the DRV/Laos list. In discussions with other members of the NSC and WSAG, the Admiral learned that there was general agreement on this point among high-level national security officials.<sup>93</sup>

### *Admiral Moorer's March 22 cable*

The next day, March 22, 1973, Admiral Moorer sent an urgent cable to the Commander-in-Chief, Pacific ordering that the U.S. troop withdrawal be halted unless and until the DRV provided a complete list of American POWs, including those held by the Pathet Lao. The cable reads:

1. . . . The United States position is as follows: "The U.S. will complete the withdrawal of its military forces from South Vietnam in accordance with the terms of the agreement and coincident with the release of all, repeat all, American prisoners held throughout Indochina."

<sup>91</sup> Cable from Kissinger to Pham Van Dong, March 20, 1973.

<sup>92</sup> Deane memo, March 21, 1973.

<sup>93</sup> Deposition of Admiral Thomas Moorer to Select Committee, pps. 227-230.



2. Do not commence withdrawal of the fourth increment until the following two conditions are met: (1) U.S. has been provided with a complete list of all U.S. PW's including those held by the Pathet Lao, as well as the time and place of release. (2) The first group of PW's have been physically transferred to U.S. custody.<sup>94</sup>

Admiral Moorer and others testified that such a far-reaching order never would have been issued by the Chairman of the Joint Chiefs of Staff without the express approval of the President, the National Security Adviser and the Secretary of Defense.

In a letter to the Committee, however, former President Nixon wrote:

I do not recall directing Admiral Moorer to send this cable. It appears to be a statement of our policy at the time, namely that we would not commence the final phase of our withdrawal until we received a complete list of the last group of POWs to be released, including those from Laos. We had interrupted our troop withdrawal on several previous occasions until we received lists of our POWs to be released. In this case, we apparently interrupted our withdrawal again because Hanoi suddenly disclaimed responsibility for releasing U.S. prisoners in Laos. As far as I can recall, I do not believe this cable was based on any knowledge that there were POWs held in Laos in addition to the nine we were aware of at that point.<sup>95</sup>

*Ambassador Godley's cable*

Also on March 22, 1973, the U.S. Ambassador to Laos, MacMurtrie Godley, sent a cable to the Secretary of State advocating a two step approach to obtaining the release of American prisoners captured in Laos:

We believe the LPF holds, throughout Laos, more prisoners than found on the DRV list. But we believe that, for the time being, we should concentrate our efforts on getting these nine listed men repatriated as soon as possible. The release of the nine PW's already acknowledged seems possible within the time frame of the Vietnam agreement. However, we do not believe it is reasonable to expect the LPF to be able to produce an accurate total PW list by March 28. The LPF just has not focused on the PW repatriation and accounting problem until very recently and probably cannot collect, in the next few days, the information we require. Therefore, we believe we should continue to press for the release of the nine acknowledged U.S. PW's within the time limit of the Vietnam agreement, but deal with the questions of accounting for our MIA's, and determining whether there are additional PW's to be repa-

<sup>94</sup> Cable from Adm. Moorer to Admiral Noel Gayler (CINCPAC), March 22, 1973. Some Members of the Select Committee believe that the U.S. threat to halt troop withdrawals referred only to the prisoners on the DRV/Laos list, and have cited testimony by some former Nixon Administration officials and some contemporary press accounts to support that view.

<sup>95</sup> The Hon. Richard M. Nixon, Letter to Select Committee, December 30, 1992, p. 9.



triated, within the framework and time limits of the Laos ceasefire and military protocol.<sup>96</sup>

In testimony before the Select Committee, Ambassador Godley could not remember whether his cable was in response to, or independent of, Admiral Moorer's cable of nine hours earlier.

### *The March 23 cable*

On March 23, 1973, Admiral Moorer sent a second cable to the United States Command in Southeast Asia. The cable, again transmitting an order approved by the President, the National Security Adviser and the Secretary of Defense, modified the order set forth in Admiral Moorer's cable the day before. The March 23 cable directed that the U.S. troop withdrawal would be completed within the 60-day period as long as the nine American POWs on the DRV/Laos list were released. The cable reads:

Seek private meeting with North Vietnamese representative. Our basic concern is the release of the prisoners and we do not object to the PLF playing the central role as long as the men are returned to us. We need precise information and understanding on the times and place of release of the prisoners on the list provided 1 February. The routes and place may be designated by the PLF. However, the United States must have the assurances, either privately from you or through other channels, such as the United States officials in Vientiane, that their release will take place by 28 March before we can give assurances that our withdrawal will be completed by 28 March. Of course, we intend to pursue the question of other U.S. personnel captured or missing in Laos following the release of the men on the 1 February list. For your information only, the purpose of the above is to try to get things back on track and moving again.<sup>97</sup>

The revised U.S. position did succeed in getting "things back on track and moving again." On March 26, the North Vietnamese agreed to the release of the ten POWs on the DRV/Laos list provided only that the actual release be made by representatives of the Pathet Lao. The U.S. accepted the condition, thereby clearing the way for the completion of American troop withdrawals and the end of Operation Homecoming.<sup>98</sup>

### *Summary*

After the March 19 POW Subcommittee meeting in Saigon, the U.S. faced the possibility that the prisoners on the DRV/Laos list would not be returned. As mentioned above, the DRV had switched

<sup>96</sup> Cable from Amb. Godley to Secretary of State William Rogers, March 22, 1973.

<sup>97</sup> Cable from Adm. Moorer to Gen. Woodward, March 23, 1973.

<sup>98</sup> In a telephone conversation with Select Committee Vice Chairman Bob Smith on December 29, 1992, Dr. Kissinger said that he had informed President Nixon during the 60 day period after the peace agreement was signed that U.S. intelligence officials believed that the list of prisoners captured in Laos was incomplete. According to Dr. Kissinger, the President responded by directing that the exchange of prisoners on the lists go forward, but added that a failure to account for the additional prisoners after Operation Homecoming would lead to a resumption of bombing. Dr. Kissinger said that the President was later unwilling to carry through on this threat.

gears on that date and told U.S. negotiators that they would have to deal directly with the Pathet Lao for the return of Americans captured in Laos.

As the Administration prepared its response to the DRV, the intelligence community weighed in with information indicating that the LPF was possibly holding U.S. prisoners in addition to those on the DRV/Laos list. This provided impetus for an even tougher response than might otherwise have been given. The decision was made, and reflected in Admiral Moorer's March 22 cable, to demand the return of all U.S. prisoners, including those held by the Pathet Lao.

Almost immediately following the sending of the March 22 cable, however, the Administration apparently had second thoughts. Ambassador Godley indicated that the Pathet Lao would probably not be able to provide quickly a list of prisoners that it held. If true, this meant that adherence to the demand that all prisoners be released might jeopardize and would certainly delay the release of other prisoners, including those on the DRV/Laos list. Thus, the March 23 cable makes it clear that the U.S. would proceed with troop withdrawals if the DRV would guarantee the release of those on the February 1 list. Practically speaking, this had been the policy prior to March 19, and it was the policy that was ultimately carried out.

### *Homecoming complete, Laos unresolved*

On March 27, one day prior to the release of the prisoners on the DRV/Laos list, U.S. Embassy officials John Gunther Dean and Richard Rand met in Vientiane with LPF spokesman Soth Petrasy and expressed the hope that additional prisoners would be released. The officials reminded Soth of his earlier statements that the LPF was holding prisoners and discussed, in particular, the cases of David Hrdlicka and Eugene DeBruin. Soth replied by saying that he would refer the matter to his superiors in Sam Neua.

That same day, Richard Kennedy and John Holdridge of the NSC staff summarized the situation in a memorandum to Dr. Kissinger:

All U.S. POWs listed by the other side as having been captured in Vietnam or Laos are now to be released by March 29. There still remains, however, the problem of the MIAs. So far, little progress has been made in the Four Party Commission POW Subcommittee on this issue. The Pathet Lao have indicated that there might be more POWs than the 9 on the list, and POWs have been identified who were on no list and who haven't been reported by the other side as dead.<sup>99</sup>

Although the release of the prisoners on the Laos list, coupled with the completion of Operation Homecoming on March 29, was sufficient to gain the full withdrawal of American troops, it did not resolve the problem of obtaining a satisfactory accounting of Americans lost in Laos. According to a memo sent by Assistant Secre-

<sup>99</sup> Memorandum from Richard Kennedy and John Holdridge to Kissinger, March 27, 1973.

tary of Defense Eagleburger to Secretary of Defense Richardson on March 28:

DIA concludes that the LPF may hold a number of unidentified U.S. POWs although we cannot accurately judge how many. The American Embassy, Vientiane, agrees with this judgment . . .

the U.S. is prepared to accept release of the ten men on the 1 February list along with the other U.S. personnel being held in NVN as the final condition for complete U.S. troop withdrawal. However, there has been no accounting of U.S. personnel in Laos other than the 1 February list of ten who were probably all captured in Laos by the NVA rather than the Pathet Lao. Hence, assuming all the prisoners currently being held in NVN are released by 28 March, we still have the Laos MIA question remaining unresolved.<sup>100</sup>

Secretary Richardson forwarded the memo from Eagleburger to Dr. Kissinger that same day, including a series of options for following up on the issue. Although Secretary Richardson deleted options suggested by Eagleburger for direct military strikes against Laos, he included proposals to:

- Tell the LPF that the U.S. knows they hold American prisoners, and demand their immediate release as well as an accounting and information on all those who may have died;
- conduct intensive and obvious tactical air reconnaissance of North and South Laos; and
- direct the movement of a new carrier task force into the waters off Vietnam.<sup>101</sup>

#### POST-HOMECOMING

##### *Presidential statements*

By March 29, 1973, the most critical period for implementing the PPA had passed. The last of American troops had been withdrawn; the last of the POWs on the lists provided by the DRV and the Viet Cong had been released. But the President had reason to be concerned that live U.S. POWs might well remain in captivity in Indochina.<sup>102</sup> Over a period of several weeks, beginning on February 6, 1973 with a set of talking points provided to Dr. Kissinger by the DIA, and ending on March 28, 1973 with a strongly worded memorandum to Dr. Kissinger from Secretary of Defense Elliot Richardson, the White House had received reports indicating the possibility that the POW release from Indochina had not been complete. As the intelligence community had made clear to the White House, the area of gravest concern was Laos, where it was feared that live U.S. POWs held by the Pathet Lao had been held back despite the DRV's informal promise to arrange their release.

<sup>100</sup> Memorandum from Eagleburger to Richardson, March 28, 1973.

<sup>101</sup> Memorandum from Richardson to Kissinger, March 28, 1973.

<sup>102</sup> In a December, 1992 letter to the Select Committee, former President Nixon wrote that "Although everyone was aware of the possibility that the release was incomplete, I had no personal knowledge that any U.S. serviceman still alive had been kept behind."

Nevertheless, the President referred only indirectly to these concerns when he told the American people that night:

For the first time in 12 years, no American military forces are in Vietnam. All of our American POWs are on their way home.

A few moments later, the President added that:

There are still some problem areas. The provisions of the agreement requiring an accounting for all missing in action in Indochina, the provisions with regard to Laos and Cambodia, the provisions concerning infiltration from North Vietnam into South Vietnam have not been complied with. . . .

We shall insist that North Vietnam comply with the agreement. And the leaders of North Vietnam should have no doubt as to the consequences if they fail to comply with the agreement.<sup>103</sup>

The President did not mention that 73 of the Americans he now referred to as "missing in action" were still officially listed by the DIA as prisoners of war based on information that they were or may have been captured alive. Nor did the President cite the concerns of top Administration officials about the possibility that live Americans remained in captivity in Laos.

It was suggested by some witnesses during the Select Committee's hearings that when the President referred to the return of "all . . . our American POWs," he may have meant to refer simply to the POWs on the DRV and Viet Cong lists and not to downplay the possibility that other U.S. POWs were still being held. That would not explain, however, why the President essentially repeated his March 29 statement several times thereafter. On May 24, 1973, in a speech to returned POWs, for example, he said that "1973 . . . saw . . . the return of all our prisoners of war."<sup>104</sup> And in a speech on June 15, he said that "for the first time in 8 years, all of our prisoners of war are home here in America."<sup>105</sup>

Twenty years later, during the Select Committee hearings, two high-level Nixon Administration officials (former Secretary of Defense Melvin Laird and former CIA Director and Defense Secretary James Schlesinger) questioned the wisdom and accuracy of the President's March 29, 1973 statement. It is important to note, however, that the Committee has found no documented evidence to indicate that any senior official in the Nixon Administration—including Mr. Laird or Mr. Schlesinger—publicly or privately questioned the President's statement at the time it was made. In fact, Mr. Laird had left the government in January, 1973 and Mr. Schlesinger told the Committee that he had spent the vast majority of his time during the early months of 1973 defending the CIA against allegations of involvement in the Watergate scandal.

<sup>103</sup> Pres. Nixon address, March 29, 1973.

<sup>104</sup> President Nixon, Remarks at a Reception for Returned Prisoners of War, Washington, D.C. May 24, 1973.

<sup>105</sup> President Nixon, Remarks at the Unveiling of the Cornerstone of the Everett McKinley Dirksen Congressional Leadership Research Center, Pekin, Illinois, June 15, 1973.

In response to a Committee question about his March 29 statement, former President Nixon wrote:

I firmly believe that the Committee's handling of my statement has been totally unprofessional, calculatedly attempting to create the impression that Dr. Kissinger and I and other members of the Administration knowingly presented false information with respect to the return of all our POWs. As Dr. Kissinger has testified, to leave the impression that any President and his associates would deliberately leave behind live POWs was a lie. For members of the Committee to create such an impression, even for partisan political reasons, is totally unjustifiable. But to convey the impression to the hundreds of families of MIAs that an American President deliberately left behind their loved ones and that some of them might still be alive can only be described as obscene.

The Committee owes to the MIA families and to history an honest statement of the facts with regard to POWs and MIAs. Throughout America's military history, casualties are divided into three categories—those known to be killed in action; those known to be and acknowledged by the enemy to be prisoners of war; and all others who are classified as missing in action. My statement on March 29 was true to my knowledge then and, in view of what I have seen of the Committee's work to date, is true now. Further, the fact that I was not satisfied with the accounting we received for MIAs was true then and is true now.<sup>106</sup>

The Administration and the American public had entered into Operation Homecoming with expectations that were only partially satisfied by the time that operation was complete. The families of those still listed as POW or as missing had the greatest cause for anguish because the answers they hoped would be forthcoming from the peace agreement had not materialized.

#### *The Clements/Shields meeting*

In early April, 1973, Deputy Secretary of Defense William Clements summoned Dr. Roger Shields, head of the Defense Department's POW/MIA Task Force, to his office to discuss DOD's need for a new public formulation of its POW/MIA policy. According to Dr. Shields' deposition:

Dr. SHIELDS. He (Mr. Clements) indicated to me that he believed that there were no Americans alive in Indochina. And I said: I don't believe that you could say that . . .

I told him that he could not say that. And he said: you didn't hear what I said. And I said: you can't say that. And I thought he was probably going to fire me . . .

QUESTION. What did you interpret that to mean, "you didn't hear me"?

Dr. SHIELDS. That I was fighting the problem. You remember that there were a lot of people at the time who

<sup>106</sup> Nixon letter, pp. 12.

wanted to declare victory, okay. And I think that maybe at that point in time he believed that we had what we had and that was all we were going to get and that there was no one there.

He didn't have the benefit of the long negotiations that I had had, the contact with the communists that I had had, nor did he have the benefit of all the intelligence information with regard to all the specifics on a daily basis that I had.

So I explained to him my own feeling, not sure whether I was going to survive the incident or not, because he's a very strong man, as you know, a very strong individual with respect to his feelings. And he did not insist on holding his point of view. I think that he came around to my point of view.<sup>107</sup>

During his public testimony, Dr. Shields essentially repeated his version of the meeting with Mr. Clements:

Sen. KERRY. . . . You recall going to see (Deputy) Secretary of Defense William Clements in his office in early April, a week before your April news conference, correct?

Dr. SHIELDS. That's correct.

Sen. KERRY. And you heard him tell you, quote, all the American POWs are dead. And you said to him, you cannot say that.

Dr. SHIELDS. That's correct.

Sen. KERRY. And he repeated to you, you did not hear me. They are all dead.

Dr. SHIELDS. That's essentially correct.<sup>108</sup>

Mr. Clements provided the Select Committee with inconsistent testimony on this subject. In his deposition, Mr. Clements denied any recollection of a meeting with Dr. Shields and stated that he and Dr. Shields never would have had such a meeting, because Dr. Shields was too low in the Pentagon hierarchy. Further, Mr. Clements testified, he would not have told anyone in April 1973 that "they're all dead," because it was not until several years later that he reached that conclusion.<sup>109</sup>

At the public hearing in September 1992, however, Mr. Clements conceded that he did meet with Dr. Shields in early April 1973. Mr. Clements testified that he told Dr. Shields that "in all likelihood those people over there are probably all dead. [T]here's no way that I could have said they are all dead, because I didn't know that."<sup>110</sup>

### *The Nixon/Shields meeting*

On April 11, 1973, one day prior to a scheduled DOD press conference at which he was to discuss the results of Operation Homecoming, Dr. Shields met with President Nixon and Gen. Brent Scowcroft, the Deputy National Security Adviser.

<sup>107</sup> Shields deposition, pp. 509-511.

<sup>108</sup> Shields testimony, September 24, 1992.

<sup>109</sup> Clements deposition.

<sup>110</sup> Clements testimony, September 24, 1992.

A memo prepared for the meeting by Gen. Scowcroft indicated that its purpose was to thank Dr. Shields for his work on the POW/MIA issue and to discuss the results of Operation Homecoming. Among the proposed items for discussion were the following questions:

5. Now that our prisoners are back, how are we progressing in respect for our missing in action?

6. Are there any indications that some of our MIA's might still be alive?

7. Do you believe the other side will cooperate in helping us to account for the missing in action?<sup>111</sup>

The Select Committee has sought to learn as much as possible about this meeting.<sup>112</sup> A Memorandum of conversation concerning the meeting, provided to the Committee by the NSC, contains no reference to any discussion of either Dr. Shields' upcoming press briefing or the question whether any U.S. POW/MIAs might still be alive. Both Dr. Shields and Gen. Scowcroft told the Committee that they did not recall any effort by the President during the meeting to instruct Dr. Shields on what he should say during his press conference the following day. Both also state that they recall the meeting as being primarily congratulatory in nature, for a job well done in organizing and coordinating Operation Homecoming.

In a letter to the Committee, former President Nixon wrote:

My recollection is that I told Mr. Shields we had an equal obligation to find the facts concerning the MIAs as we did to secure the release of the POWs. I also conveyed to him my belief, which I still firmly hold, that it would have been unfair and a disservice to MIA families to raise false hopes without justification.<sup>113</sup>

#### *Shields' press conference*

On April 12, 1973, Dr. Shields met with the press to discuss the Defense Department's reaction to Operation Homecoming. Although his opening remarks did not deal with the subject, one of the first questions directed at Dr. Shields concerned the possible survival of American POWs in Laos and Cambodia. Dr. Shields responded by saying that:

We have no indications at this time that there are any Americans alive in Indochina. As I said, we do not consider the list of men that we received from Laos, the recovery of 10 individuals, 9 of whom were American and 7 military, to be a complete accounting for all Americans who are lost in Laos. Nor do we consider it to be a complete statement of our information known to the LPF (Pathet Lao) in Laos. With regard to Cambodia, we have a number

<sup>111</sup> Memorandum from Deputy National Security Adviser Brent Scowcroft to President Richard Nixon, April 10, 1973.

<sup>112</sup> The Committee sought access to the White House tape-recording of this meeting. Lawyers for President Nixon informed the Committee that access to the recording would be given only if the Committee agreed not to seek any other White House recordings from this time period. The Committee did not agree to this condition and has not, as a result, had access to the recording of the April 11, 1973 meeting.

<sup>113</sup> Nixon letter, p. 13.



of men who are missing in action there, some that we carried as captive. We intend to pursue that, too. With regard to these men and these uncertainties which we have, even though we have no indication that there are any Americans still alive, we are going to pursue our efforts through the process of accounting for the missing. This is exactly what this procedure is for. And we anticipate that if any Americans are yet alive for one reason or another, that we would be able to ascertain that through this process of accounting for the missing.<sup>114</sup>

Although Dr. Shields insists that he had no intention of "declaring all U.S. POWs dead," newspaper headlines the following day stressed the pessimistic nature of his response. "POW Unit Boss: No Living GIs Left in Indochina," read one headline. Dr. Shields, himself, told the Committee that:

I was distressed about the way it was reported, because a lot of family members called me on that, my very good friends. And I wanted to tell them and assure them that I was not saying that people were dead. If it had been reported that all Americans were dead, I did not say that.<sup>115</sup>

Despite these concerns, the Department of Defense made no effort to correct or clarify the record by emphasizing in public the evidence that some Americans might still be alive. As Dr. Shields himself wrote in an internal Defense Department memorandum dated May 24, 1973, the one oft-quoted line from his April 12, 1973 press briefing—that DOD had "no indications . . . that there are any Americans alive in Indochina"—had become "the basis for all subsequent answers from DOD to questions concerning the possibility that Americans may still be held prisoner in Southeast Asia."<sup>116</sup>

Again, several Nixon Administration officials who appeared before the Select Committee expressed concern about the accuracy of Dr. Shields' "no indications" statement. Admiral Moorer, for example, described the statement as "premature."<sup>117</sup> Lawrence Eagleburger, author of a March 28, 1973 internal Pentagon memorandum discussing the possibility that live Americans remained in Laos, described as "troubling" the juxtaposition of Dr. Shields' statement with the intelligence information on POWs in Laos.<sup>118</sup> Ambassador Winston Lord said he had "no explanation" for Dr. Shields' statement and described it as "puzzling."<sup>119</sup>

It should be stressed, however, that these reactions are made from the perspective of 1992. Despite the contrast between Dr. Shields' statement and information about prisoners possibly being left behind, the Committee has seen no evidence of objections from within the government to Dr. Shields' characterization of the issue at the time it was made.

<sup>114</sup> Shields statement, April 12, 1973.

<sup>115</sup> Shields deposition, p. 524.

<sup>116</sup> Memorandum from Shields to Amb. Hill, May 24, 1973.

<sup>117</sup> Moorer testimony, September 24, 1992.

<sup>118</sup> Eagleburger deposition.

<sup>119</sup> Lord testimony, September 21, 1992.



*Memo from Dr. Shields to Ambassador Hill*

Dr. Shields expressed concern that his April 12 statement might have been overtaken by events in an internal memorandum written on May 24, 1973 to Ambassador Robert Hill, the new Assistant Secretary of Defense for International Security Affairs:

... only 10 persons, nine of whom were U.S., were released by the other side as Laos prisoners. Over 300 personnel remain unaccounted for in Laos . . . we have over 1300 Americans who are unaccounted for, and this means that we have no information to show conclusively that a man is either alive or dead.

In a DoD sponsored press conference held April 12, 1973, I made the statement that DoD had no specific knowledge indicating that any U.S. personnel were still alive and held prisoner in Southeast Asia. This statement has been the basis for all subsequent answers from DoD to questions concerning the possibility that Americans may still be held prisoner in Southeast Asia. It was a totally accurate and factual statement at the time it was made.

In light of more recent events, I believe that answer is no longer fully satisfactory. Specifically, there is reason to believe that the American pilot of an Air America aircraft downed in Laos on May 7 may have been captured along with six Meo passengers, by North Vietnamese forces. The last communication received from the pilot indicated he was landing on a hostile airstrip. A short time after, (intelligence method redacted) indicated that the U.S. pilot and the Meo passengers had been captured. Embassy Vientiane now reports (method redacted) the capture of the American and his passengers.

On 4-5 February 1973, a USAF EC-47 carrying a crew of 8 U.S. personnel was downed in Laos. The search and rescue team succeeded in locating and inspecting the wreckage of the aircraft. Because the area was a hostile one, the inspection was not completed. Nevertheless, parts of four bodies were recovered, only one of which was identified. A short time after the shootdown of the EC-47, (method redacted) indicated that four Americans had been captured in an area some forty miles from the EC-47 crash site . . .

Given these circumstances, I believe that the DoD position regarding the possibility of men still being held prisoner in SEA should be altered slightly. . . .

I am scheduled to testify on the MIA issue . . . With your concurrence, I will maintain the position that we do not know whether those now unaccounted for are alive or dead.<sup>120</sup>

The Select Committee's investigation has yielded no evidence that Dr. Shields ever received a response to his May 24, 1973 memo to the Assistant Secretary of Defense.

<sup>120</sup> Memorandum from Shields to Amb. Hill, May 24, 1973.

*Effect of administration's statements*

In his deposition, Dr. Shields said that the Administration told the Pathet Lao during Operation Homecoming that it had certain knowledge that the LPF was holding American prisoners even though the Administration was, in fact, not certain. The purpose, according to Dr. Shields, was to put as much pressure as possible on the LPF in the event that prisoners were being held.

This was not the approach taken by the Administration in its post-Homecoming statements. The evidence is that the primary purpose of the public statements during this period was not to put pressure on the DRV or LPF, but rather to avoid raising the hopes of POW/MIA families.

During a WSAG meeting, before the Peace accords were signed, one Defense Department official warned against a repetition of the Korean War experience, when all missing Americans not known to be dead were officially presumed to be alive. The DOD official argued that such a policy raised expectations that were unrealistic and painful and impossible to resolve.

Unfortunately, the approach that was adopted may have served neither the purpose of pressuring our former adversaries nor the goal of easing family concerns.

As Ambassador Lord testified:

[O]nce you announce that [all of the POWs are home, and that you have no indications any remain alive in Indochina,] you lose any leverage you have on the Lao and the North Vietnamese. If you're publicly saying we have no indication, how can you press them privately or any other way to release? So it undercuts any leverage you have with them. That's one aspect, leaving aside whether it's a strange reversal of our actual calculations and whether there's any dissembling here, but just in terms of pressing North Vietnam and Laos, you're losing your leverage. They'll say: Well, you announced that you didn't have any. . . . Leaving aside the human and other political dimensions, it's terrible [negotiating strategy]. You lose all your leverage with the other side.<sup>121</sup>

Meanwhile, the Defense Department's effort to keep POW/MIA family expectations in line with its perception of the reality ran into a wall of human emotion. The Administration's optimistic statements about what the peace agreement would produce caused families to expect more answers than actually were forthcoming. Although the Administration's statements seemed designed to help families accept the likelihood that their loved ones would not be returning alive, many families could not—and would not—accept this conclusion without proof.

Neither Dr. Shields nor any other Administration spokesman ever said publicly that "all our POWs are dead." They never ruled out, in public testimony, the possibility that some POWs might have been left behind. They expressed dissatisfaction with the lists

<sup>121</sup> Lord deposition, pp. 239-240.

received from the DRV, and especially the DRV/Laos list, and stressed the importance of efforts to account for the missing.

But the fact remains that the period for public confrontation with the DRV and Pathet Lao over POW/MIAs ended with Operation Homecoming. The hard questions that the Defense Department had about prisoners were no longer raised at press conferences, but—if at all—in private sessions with the DRV or LPF. The emphasis on Americans known to have been captured was replaced by a far broader and less confrontational search for the "missing." And the ongoing accusations of violations of the agreement and threats of military action directed against the DRV were prompted not by the DRV's failure to comply with the POW/MIA provisions of the agreement, but by issues of infiltration and military resupply of the South.

*Meetings between Dr. Kissinger and Le Duc Tho, May/June 1973*

Due to continued allegations of ceasefire violations by all sides, Dr. Kissinger and Le Duc Tho met in Paris in May and June of 1973 for the purpose of getting the implementation of the peace agreement back on track.

In anticipation of these meetings, Secretary of Defense Richardson sent a memorandum to the White House in April 1973 urging Dr. Kissinger to lean hard on the North Vietnamese on the subject of POWs in Laos. Secretary Richardson remained very concerned about the possibility that live American POWs were still being held captive by the Pathet Lao, and he wanted Dr. Kissinger to do everything he could to obtain additional information concerning that possibility.

In testimony before the Select Committee, Dr. Kissinger said that the POW/MIA issue played an important role in these meetings:

We never accepted the proposition that they (U.S. POWs) are all dead, continued to express our dissatisfaction with respect to the accounting for MIAs, and pressed as hard as we could for an execution of their commitments.

Between May and June, 1973, I conducted 12 days of talks with the North Vietnamese. I reviewed in detail the North's violations, including the failure to account for all of the MIAs, but Hanoi sensed our leverage was rapidly eroding. A host of Congressional resolutions made it clear that we would have no support for military action. On May 31st, the Senate rejected a Republican sponsored amendment which would have made the cutoff of American military activity in Laos and Cambodia contingent upon the North Vietnamese making a good faith effort to account for the MIAs.

In response to my presentations, Le Duc Tho disdainfully read me editorials from the American press and speeches from the Congressional Record.

Despite all these obstacles, strenuous negotiations resulted in a joint communique on June 13th, reaffirming and strengthening all the POW provisions, including those

with respect to missing in action of the original agreement. It was again violated and ignored. We made no secret of our outrage with Hanoi's violation. During 1973, we delivered at least 30 separate public statements or private messages to that effect.<sup>122</sup>

The record does, indeed, reflect that the United States protested frequently the DRV's unwillingness to fulfill its obligations under the PPA concerning Americans missing in Vietnam. These protests were ordinarily delivered through the Four Party Joint Military Team and are discussed below.

During his discussions with Le Duc Tho, Dr. Kissinger pressed his view that Article 8(b) of the Paris Peace Accords, dealing with accounting for the missing in action, was applicable not only in Vietnam, but throughout Indochina. Specifically, Dr. Kissinger asked Le Duc Tho for a private pledge that the DRV would assist in obtaining an accounting of Americans missing in Laos. Le Duc Tho replied only that "we have to cooperate with our Lao friends because it is their sovereignty." Le Duc Tho also said that if Dr. Kissinger wished to assert, "for the purpose of public opinion," that article 8(b) is applicable to all of Indochina, the DRV "will say nothing about it."<sup>123</sup>

In addition, the record indicates that during a May 23, 1973, meeting with Le Duc Tho, Dr. Kissinger asked the North Vietnamese to state publicly that there were no more live American POWs in Laos. As part of a "Draft Understanding on Laos," Dr. Kissinger proposed that the following language be made a part of the joint communique: "The DRV side has been informed that there are no U.S. prisoners being held in Laos."

Dr. KISSINGER . . . we would still like a sentence from you which I don't understand why you can't give us—which says that "the DRV has been informed there are no U.S. prisoners being held in Laos—that all the prisoners held in Laos have been released." It would be very important for us.

LE DUC THO. I have acknowledged to you that all of them have been released.

Dr. KISSINGER. Then why can't you write it down?<sup>124</sup>

Despite Dr. Kissinger's request, Le Duc Tho refused to say publicly that no live U.S. POWs remained in Laos. As during the pre-Accords negotiations, Le Duc Tho would not agree to make any public statements which indicated either explicitly or implicitly North Vietnam's control of the Pathet Lao.

Dr. Kissinger was asked about this exchange during a hearing before the Select Committee:

Sen. KERRY . . . So here you are in May with Le Duc Tho saying not . . . we need an accounting, but saying, give us a sentence that says there's nobody alive in Laos, it will be helpful to us.

<sup>122</sup> Kissinger testimony, September 22, 1992.

<sup>123</sup> Memorandum of Conversation, Le Duc Tho and Kissinger, May 23, 1973.

<sup>124</sup> Memorandum of Conversation, Le Duc Tho and Kissinger, May 23, 1973.

Dr. KISSINGER. You know, Mr. Chairman, it is a really bizarre situation when the people who were parading and keeping us from doing the things we needed to do are now telling us what sentences we should have used after all our leverage was taken away from us.

Sen. KERRY. Sir, this is a filibuster. I mean, I am not doing that. I am asking you why it is that you did not present the case but said just give us a sentence that there is no one alive.

Dr. KISSINGER. I presented the case, Mr. Chairman, in February. We—

Sen. KERRY. Why would you have been satisfied with a sentence?

Dr. KISSINGER. I wasn't satisfied, Mr. Chairman. I was dealing here with a man who knew reality. I had no means of pressure left. I had no economic aid left. The Congress was in the process of passing a series of resolutions that banned military action, and all I could do was bluff my way through this due to the actions that were taken by the Congress of the United States, and as I said in my statement, it does not behoove the Senate to blame me for what sentences I may or may not have used in circumstances which would have been totally—

Sen. KERRY. But this goes to the gravamen of the issue, Mr. Secretary. It really does. If you were to be satisfied with a sentence that says no one is alive, it'll help us, rather than to suggest to him that if you don't tell us what happened we can resume the bombing, there's a difference about what was being done about POWs, and the fact is that subsequent to this, despite the fact that you sit here and now say to me, our leverage is being taken away, you recommended bombing after this meeting to enforce other elements of the cease fire, but not POWs.

Dr. KISSINGER. Mr. Chairman, you're just playing with documents.

Sen. KERRY. I'm playing with the facts.

Dr. KISSINGER. Of course, you take the position that people who were meeting with families all during the war, who had every incentive to get these—to want these—and every obligation to get these prisoners returned were bombing for one reason rather than another reason.

I tell you, Mr. Chairman, if we had had the authority, we would have had another major negotiation. In the context where every newspaper, where every Congressional Committee was preventing us from exercising the leverage, I—it is very easy to second-guess 20 years (later) . . . things taken out of the whole stream in which you don't even know what I said to Le Duc Tho in private conversations because the record will—well, the record won't show it, because generally when I threatened Le Duc Tho I did not do it on the record.<sup>125</sup>

<sup>125</sup> Kissinger testimony, September 22, 1992.

The legal adviser to Dr. Kissinger during the May/June talks with Le Duc Tho was George Aldrich. His recollections indicate that, although the question of missing Americans was discussed, the possibility that some POWs might still be alive was not.

Mr. ALDRICH. My memories and my notes on those meetings indicate that the principal discussions of nonreturn of prisoners related to the nonreturn of prisoners between the Vietnamese parties, not ours. Our concern as expressed was about the accounting in Laos. It was not a concern about nonreturn.

Sen. KERRY. But at that time there was an issue of nonreturn.

Mr. ALDRICH. Not in my view. I was not told there was any issue, sir.

Sen. KERRY. You had no recollection of any issue at that time, then, and no one had put in front of you at that time in May a question about people not accounted for in Laos.

Mr. ALDRICH. It was not, as far as I can recall, ever suggested to me that prisoners in Laos had not been returned.<sup>126</sup>

On June 13, 1973, the United States and the DRV signed a joint communique pledging mutual support for full implementation of the Paris Accords. Point 8 of the communique states that:

— In conformity with article 8 of the Agreement, (a) any captured personnel covered by Article 8(a) of the Agreement who have not been returned shall be returned without delay, and in any event within no more than 30 days from the date of signature of this Joint Communique . . .

in conformity with Article 8(b) of the agreement, the parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of remains, and to take any such other measures as may be required to get information about those still considered missing in action.<sup>127</sup>

In his statement to the press, Dr. Kissinger interpreted the communique as requiring both sides to make "major efforts to help each other to account for the missing in action throughout Indochina." As promised, Le Duc Tho said nothing to contradict Dr. Kissinger's statement. Unfortunately, the Committee found no evidence that the DRV undertook the "major efforts" hoped for by Dr. Kissinger.

### *Status change policy*

Federal law provides the secretaries of the military services with exclusive authority to determine initially and later change the casualty classifications of personnel captured (POW), killed (KIA) or missing in action (MIA). Although the status classification process

<sup>126</sup> Aldrich testimony, September 21, 1992.

<sup>127</sup> Joint Communique, United States and North Vietnam, June 13, 1973.

is subject to guidelines set forth in the statute and to certain constitutional due process guarantees, it nevertheless remains within the exclusive jurisdiction of the service secretaries.

Throughout the course of the Vietnam War, status changes were made in accordance with the conventional practice. On May 22, 1973, however, acting Secretary of Defense William Clements received a routine memorandum from the DIA concerning Americans unaccounted for after Operation Homecoming. The memo stated that:

The Military Services are not considering any status changes at this time from missing to captured. However, one case involving an American civilian—Mr. Emmet Kay who was lost over Laos on 7 May 1973—is under review by the Department of State and this Agency for possible change of status from missing to captured.<sup>128</sup>

For reasons that remain unclear to the Select Committee, Secretary Clements wrote on the bottom of the memo:

I want a memo sent to all departments (Services-ASD-DIA-JCS) etc. that any reclassification from MIA to POW must first be cleared by me/MIA to KIA ok within each service and no review by me.

The requested memorandum was prepared by Assistant Secretary of Defense Robert Hill and was issued over Secretary Clements' signature on June 8, 1973. As ordered, the memo directed that the service secretaries present to him for his personal review and approval all proposed status changes from MIA to POW. No such requirement was imposed for proposed status changes from POW to MIA or KIA, or from MIA to KIA. The memo, in its entirety, reads:

I request that all actions which recommend reclassification of military personnel from missing in action to captured status be submitted to me for approval. Proposed reclassification actions should be first routed through the Assistant Secretary of defense for International Security Affairs for preliminary review before referral to me.<sup>129</sup>

In his deposition, Mr. Clements said that the service secretaries presented between 50 and 75 cases to him over the next several months pursuant to this directive. In each case, according to Mr. Clements, it was recommended that a serviceman's status be changed from MIA to POW. Mr. Clements recalled that, in his judgment, the intelligence information in every one of these cases fell short of his standards for POW status. Mr. Clements accordingly denied the status change request in each instance.

Mr. Clements' memorandum and testimony during his deposition concerning it were peculiar for a number of reasons.

First, the memo reflected a departure from legally required procedures under which status changes were the exclusive prerogative of the service secretaries.

<sup>128</sup> Memorandum from DIA to Clements, received May 22, 1973.

<sup>129</sup> Memorandum from Clements, June 8, 1973.

Second, the policy reflected in the June 8 memo is contrary to another memo, sent by Secretary Clements to President Nixon on July 17, 1973, in which he said that decisions about status changes should continue to be made by the service secretaries "as established by law and experience."<sup>130</sup> The Secretary did not inform the President that he had, himself, ordered the Department to follow a different policy.

Third, Mr. Clements opened his public testimony before the Select Committee on September 24, 1992 by stating that status changes were handled exclusively by the services throughout his tenure at DoD:

Within DoD, the services control classification, in the sense that when you have your POWs or MIAs or KIAs, those classifications are service-classified. The Department of Defense, as you would think of my position in the office of the Secretary of Defense, we do not do that. We did not then do that. Now, exactly what they would do at this time, I don't know. But at that time, those classifications were held within the services. In other words, the Navy classified their people, Army did theirs, and the Air Force did theirs.

I want to make that very clear because it's important that your committee and the public at large understand that the office of the Secretary of Defense and/or the State Department and/or the National Security Council, nor the President . . . had any control whatsoever over classification. That was strictly within the services.<sup>131</sup>

Fourth, during the public hearing, Mr. Clements did not recall or at any rate seem to grasp the significance of the June 8, 1973 memorandum:

Sen. SMITH. Why did you, Governor Clements, make a decision to not allow your service secretaries . . . to upgrade an individual from an MIA category to a POW category? Why did you make that decision?

Governor CLEMENTS. I don't think that I made such a decision.

Sen. SMITH. You did not make that decision. Is that your statement?

Governor CLEMENTS. I have no recollection of making a decision of that kind. Let me tell you something, Senator, it is very, very clear that only classification can be changed within the service. And let's don't get that confused.

Sen. SMITH. (reads text of June 8 memo aloud) That was June 8th, 1973.

Governor CLEMENTS. That's right.

Sen. SMITH. With your signature.

Governor CLEMENTS. And there's nothing wrong with that . . .

<sup>130</sup> Memorandum from Clements to Nixon, July 17, 1973.

<sup>131</sup> Clements testimony, September 24, 1992.



Sen. SMITH. Governor, you directed the Secretaries to route it all through you on June 8th. And on July 17th, you wrote to the President of the United States and you said: In my view, the status determination process, as established by law and experience, should be allowed to function as prescribed . . . .

Governor CLEMENTS. I agree with that.

Sen. SMITH. That is what you said to the President, but that is not what you said on June 8th to the service secretaries.

Governor CLEMENTS. I disagree completely.

Sen. SMITH. Well . . . I am not going to argue with you, Governor. It is a part of the record.

Governor CLEMENTS. Well, you don't have to argue with me, just read it again. . . .

Sen. SMITH. Governor, I have got it in your own handwriting. . . "I want a memo sent to all departments, services, ASD, DIA, JCS, that any reclassification from MIA to POW must first be cleared by me." That is what you said.

Governor CLEMENTS. I want to review——

Sen. SMITH. In your own handwriting.

Governor CLEMENTS. I want to review every one of them. That's exactly right. This was a very, very delicate issue.<sup>132</sup>

The most peculiar aspect of all this is that the Select Committee has discovered no documentary or testimonial evidence to indicate that Mr. Clements ever actually reviewed any particular status classification cases, let alone the 50 to 75 cases he cited in his deposition. Indeed, Dr. Shields, who would certainly have known if such a review ever occurred, told the Committee:

Mr. Chairman, I don't want to interject here, but . . . I can't recall of a single case where they (the services) wanted to reclassify a missing person to prisoner status.<sup>133</sup>

Finally, the Committee located a July 17, 1973, memorandum from Mr. Clements to the President and an August 17, 1973, memorandum to the Service Secretaries concerning further status changes. The July 17 memorandum stated:

Presently, there are 1,278 military personnel unaccounted for . . . Of this number, 67 are officially listed as prisoner of war based on information that they reached the ground safely and were captured. . . The rest have remained in a missing status. . . In a significant number of cases only faint hope was ever held for the individual's survival. Although our returned prisoners could confirm the death of less than 100 men, they are of the firm opinion that none of the other missing men entered the captivity system . . .

In addition, high level officials from the other side have repeatedly emphasized that none of the missing are still being held captive. Absence of new information indicating a man is alive constitutes implicit confirmation of prior evidence in those cases where

<sup>132</sup> Clements testimony, September 24, 1992.

<sup>133</sup> Shields testimony, September 24, 1992.

chances for survival were deemed small. A determination of death should now be made in those cases.<sup>134</sup>

The August 17 memorandum directed:

The Secretaries of the Military Departments to proceed as prescribed by law with changes in status to deceased, where warranted, of servicemen who did not return from Southeast Asia.<sup>135</sup>

#### *Phase-out of the POW/MIA Task Force*

In an internal Pentagon memorandum dated February 13, 1971, Secretary of Defense Melvin Laird established a POW/MIA Task Force to serve as the coordinating body within DOD for all POW/MIA-related issues:

The primary function of the Task Group will be to provide close and continuing coordination of all activities in DOD in the PW/MIA area. In accord with policy guidance, it will ensure that responsible offices and agencies work together in planning, programming, assessing, and carrying out all required actions.<sup>136</sup>

Secretary Laird placed the Task Force under the direction of the Assistant Secretary of Defense for International Security Affairs and appointed Roger Shields as chairman of the Task Force.

In a follow-up memorandum dated December 3, 1971, Secretary Laird reemphasized the importance of coordination within DOD and directed that all POW/MIA issues be forwarded to Dr. Shields:

The best interests of the Defense Department, the men, and their families require the closest and most thorough coordination of every aspect of the conduct of prisoner of war/missing in action affairs. To this end, Dr. Roger Shields, of the office of the Assistant Secretary (ISA), has been tasked with overall Department of Defense coordination responsibility for all PW/MIA matters. I ask that you direct all elements of your organization to coordinate with Dr. Shields, or his staff (PW Task Force), all actions related to prisoners of war or missing in action. I consider this to be the only way in which we can satisfactorily handle this difficult problem, and I earnestly solicit your cooperation to this purpose.<sup>137</sup>

Consistent with Secretary Laird's directives, Dr. Shields acted as DOD's leading policymaker for POW/MIA issues right up through the aftermath of Operation Homecoming. Dr. Shields served as DOD's primary POW/MIA spokesperson with the Congress, the families and the public; as the coordinator of the Department's intelligence assets assigned to the POW/MIA issue; and as coordinator of Operation Homecoming.

Nevertheless, DOD moved to abolish the POW/MIA Task Force almost immediately after the completion of Operation Homecoming.

<sup>134</sup> Memorandum from Mr. Clements to President Nixon, July 17, 1973.

<sup>135</sup> Memorandum from Mr. Clements to Service Secretaries, August 17, 1973.

<sup>136</sup> Memorandum from Laird, February 13, 1971.

<sup>137</sup> Memorandum from Laird, December 3, 1971.

ing. In a memorandum dated April 25, 1973, acting Assistant Secretary of Defense (ISA) Lawrence Eagleburger recommended that the Task Force be phased out over a four-month period:

With the recent ceasefire agreement in both Vietnam and Laos and the return of our servicemen held captive by the Communist side, the PW/MIA situation no longer warrants the retention of the PW/MIA Task Force in its present size or configuration. Accordingly, this Task Force should be phased out over the next four months and those functional areas currently being performed by the Task Force should be reassigned to the Military Departments, Joint Chiefs of Staff, and OSD Component Staff Agencies, as appropriate.<sup>138</sup>

Secretary of Defense Elliot Richardson approved Mr. Eagleburger's recommendation on May 1, 1973 and issued a memorandum ordering the phase-out of the POW/MIA Task Force by August 31, 1973. Secretary Richardson wrote:

The recent peace agreements in Vietnam and Laos, along with the withdrawal of our military forces from Vietnam and the return of our prisoners of war provide a basis for the phase-out of the Prisoner of War/Missing in Action Task Force and the functional reorganization of the DoD PW/MIA program. In this regard, I hasten to add that the phase-out of the Task Force in no way infers that those on-going programs and long-range actions on behalf of our returned servicemen, their families, and the missing in action will be terminated. Instead, a need exists for a redistribution of functional responsibilities currently being accomplished by the PW/MIA Task Force.<sup>139</sup>

The Select Committee looked closely at the rapid phase-out of the Task Force to try to determine whether it was indicative of a larger U.S. Government effort to downplay lingering doubts about the completeness of the release of American POWs from North Vietnam and Laos. Both of the memoranda cited above appear premised on the view that no live American POWs remained behind in Indochina—a premise possibly at odds with information known to the Administration. Yet, Secretary Richardson, Secretary Schlesinger and Dr. Shields all testified that the phase-out order was a mere bureaucratic shuffling of resources within DOD that did not result in any real decrease in the Department's deployment of POW/MIA assets. In fact, Dr. Shields was soon promoted to Deputy Assistant Secretary of Defense, and he remained at DOD in charge of POW/MIA matters through 1976.

#### *Joint Economic Commission*

As discussed earlier, the formation of the Joint Economic Commission (JEC) was announced on February 14, 1973 following Dr. Kissinger's visit to Hanoi. Formal meetings began the next month

<sup>138</sup> Memorandum, acting Assistant Secretary of Defense Lawrence Eagleburger, April 25, 1973.

<sup>139</sup> Memorandum, Secretary of Defense Richardson, May 1, 1973.

in Paris with Maurice J. Williams heading the American delegation. The public position taken by the Administration was still that no specific dollar figures had been discussed with the North Vietnamese; that the provision of aid would depend on DRV compliance with the ceasefire and other terms of the PPA; and that no assistance would be provided without authorization from the Congress.

By the end of March, although it was not revealed publicly at the time, the two sides had reached tentative agreement on a detailed five year plan for reconstruction. All that was lacking was an agreed mechanism for DRV reporting on how the aid would be used.

On April 5, 1973, the U.S. Senate voted 88-3 to bar the use of any previously-appropriated funds for the purpose of providing assistance to the DRV. Although the amendment did not prohibit the President from proposing a reconstruction program for North Vietnam, the tone of the debate indicated that such a proposal would not have much support.

On April 19, the JEC talks were suspended by the U.S. as a result of alleged violations by the DRV of the ceasefire. Talks did not resume until after the joint U.S.-North Vietnamese communique of June 13, 1973 pledging adherence to the terms of the PPA. Talks were then held from June 19 until July 23, after which they were suspended indefinitely due to the DRV's failure to stop military actions directed against South Vietnam.

#### *Four party joint military team*

The Four Party Joint Military Team (FPJMT), based in Saigon, came into existence immediately after the end of Operation Homecoming and was charged with responsibility for implementing article 8(b) of the PPA. Article 8(b) provides for mutual assistance in obtaining information about those considered missing in action, determining the location of graves and providing for the repatriation of remains.

On April 14, 1973, Ellsworth Bunker, the U.S. Ambassador to South Vietnam, outlined proposed priorities for the FPJMT in a cable to the Secretary of State. Ambassador Bunker said that the first priority would be recovery of the remains of those listed by the DRV and PRG as having died while in captivity. The second priority would be to seek information on the so-called discrepancy cases—Americans thought by the U.S. to have been captured alive. The third priority would be to negotiate a process for the air and ground search of crash sites.

Although meetings of the FPJMT were held regularly beginning in early April, very little was accomplished. Colonel Laurence Robson, who served as Deputy Chief of the FPJMT, testified that folders describing 104 cases of American POW/MIAs about whom the DRV should have information were turned over to the North Vietnamese. Many of these had previously been brought to the DRV's attention during Dr. Kissinger's visit to Hanoi in February. In April, as in February, however, the U.S. received no response. Despite two visits to purported U.S. POW grave sites in North Vietnam, no remains were repatriated.

According to Col. Robson, part of the DRV's refusal to cooperate may have resulted from the opposition demonstrated in Congress to the provision of reconstruction aid. And in testimony before the House Committee on Foreign Affairs in December, 1973, Assistant Secretary of Defense Roger Shields characterized the actual meetings as consisting of "propaganda speeches, boycotts, walkouts, and general stalling tactics by the Communist delegations."<sup>140</sup>

*Efforts to gain an accounting in Laos*

At the time Operation Homecoming was completed, there remained hope within the U.S. that Pathet Lao officials would admit holding at least a small number of U.S. POWs and provide information on any who might have died in captivity. There was particular attention given to individuals, such as David Hrdlicka, Eugene DeBruin and Charles Shelton, who were known to have been taken captive by the LPF. American hopes were based, to a significant extent, on previous admissions that the LPF did hold U.S. prisoners.

Beginning in early April, however, the LPF position changed.

On April 5, U.S. Embassy officials were told by Soth Petrasy in Vientiane that the LPF held no U.S. prisoners. The same message was conveyed by Soth the following day in a meeting with Senator Edward Brooke.

As a result of these meetings, the U.S. Ambassador to Laos, McMurtrie Godley, cabled the State Department that:

Although . . . U.S. PW's may be held in remote areas of PL (Pathet Lao) zone of control, we . . . received negative response. Embassy activity is currently being directed toward program of accounting for MIAs . . . .

Although U.S. Mission through the years has utilized every possible means to obtain valid information concerning MIA's in Laos, we have been unable to identify conclusively any U.S. personnel being held captive or identify conclusively a specific detention facility for U.S. Prisoners . . . .<sup>141</sup>

On April 23, at a press conference, Soth Petrasy was asked whether it was possible that American prisoners were still being held. He replied:

It is not possible. First of all, we do not recognize your list. All who were captured have been released. They came to massacre us and we had to defend ourselves. If they reached the ground alive, they could still die without ever being found. But if they were captured, they were released. If they wanted to stay alive, they should have stayed in the United States.

On May 31, 1973, Mr. Frank Sieverts, special assistant to the Deputy Secretary of State for Prisoners of War and Men Missing in Action, testified before the House Committee on Foreign Affairs regarding efforts to account for Americans missing in Laos:

<sup>140</sup> Shields testimony before House Foreign Affairs Committee, December, 1973.

<sup>141</sup> American Embassy, Vientiane, Message 13647, 05149Z, April, 1973.

In Laos, U.S. officials have been in direct contact with representatives of the Lao Patriotic Front (the Pathet Lao) to press for additional information on Americans missing or captured in Laos. We have told the communist side of our concern at the small number of Americans listed as captured in Laos, in view of past hints that a larger number were held by Pathet Lao forces, and in view of evidence that at least two others had been captured in Laos. The communist side has repeatedly told us and has recently stated publicly that there are no more Americans captured or held in Laos. They have also said that further accounting for the missing must await the formation of a coalition government, as specified in the February 21 Laos ceasefire agreement. Our efforts to convince the Communist side to proceed with this accounting without waiting for a new government to be formed has been in vain.<sup>142</sup>

On September 14, 1973, the Protocols to the February 21 Laos Ceasefire Agreement were signed between the Pathet Lao and the Royal Lao Government. Article 18 of the Protocols called for the "return of all persons regardless of nationality who were captured and imprisoned for cooperating with the other side during the war (to be) accomplished in three stages and completed at the same time as the withdrawal of foreign troops and military personnel." The protocol also required an exchange of lists of prisoners and those who died in captivity within 30 days of the signing of the agreement on September 14, a provision that was subsequently disregarded by the LPF.

At the end of the 30 day period for the lists of prisoners to be exchanged, a group of POW/MIA family members traveled to Vientiane, Laos in anticipation of receiving information on persons unaccounted for in Laos. The family members met with Soth Petrasay, but no information concerning their loved ones was provided.

On December 5, 1973, Mr. Sieverts again testified before the House Foreign Affairs Committee:

The Lao Patriotic Front has repeatedly stated, publicly and directly to senior U.S. officials, that there are no more American prisoners captured or held in Laos—with the exception of a civilian, Emmet Kay, a pilot for Continental Air Services, Inc., whose plane went down in Northwest Laos May 7, 1973 . . . .

Our representatives have . . . provided the Communist side with a detailed listing of our POW/MIA's in Laos, including those listed as dead whose bodies were not recovered, with the request for information on those men.

We have also called particular attention to the cases of men who were previously acknowledged as captured in Laos, or for whom there are indications that they survived shootdowns. . . . As is clear from the foregoing, our representatives in Vientiane have maintained continuing pressure on the communist side on this subject. . . .

<sup>142</sup> Sieverts testimony before House Foreign Affairs Committee, May 31, 1973.

The Pathet Lao representative, however . . . . said no information would be forthcoming until . . . the coalition government was formed.

On the question of JCRC access to Laos, the Pathet Lao representative flatly stated that no outside element could concern itself with POW/MIA's in what he described as the "liberated zone."

The vast majority of crash and potential grave sites in Laos are located in areas under the control of North Vietnamese forces. Thus, North Vietnam effectively controls the basic information on this subject.

We have attempted to raise it with them in the FPJMT in Saigon, but they have insisted that POW/MIA's in Laos must be discussed with the LPF.<sup>143</sup>

Although the Lao Provisional Government was finally formed in April 1974, no information concerning U.S. POWs or MIAs was forthcoming from the new government.

In a report dated August 16, 1974, the DIA reported that 294 Americans remained unaccounted for in Laos, of whom 5 were known to have been captured. According to the report, Special Intelligence (SI) indicated that:

Navy pilot Barton S. Creed may have been captured but was probably dead;

Air Force pilot David Hrdlicka, a known captive, was believed to have died in mid-1966;

Eugene Debruin, acknowledged as captive by the Pathet Lao, had probably not survived;

Air Force pilot Charles Shelton, a known captive, had probably died in mid-1966; and

The civilian pilot Emmet Kay, downed in May, 1973, remained in captivity. (Kay was released in September, 1974)<sup>144</sup>

During his de-brief, Emmet Kay stated that he had no knowledge of any other Americans being held in Laos. He also said that he had been told by the Pathet Lao that he was the only American being held there and that all U.S. POWs were released in 1973 during Operation Homecoming.<sup>145</sup>

The coalition government in Laos was replaced in December, 1975 by a government controlled entirely by the Pathet Lao.

#### DISCUSSION

##### *Orchestrated confusion—the DRV and Pathet Lao*

Throughout the period between January 27 and the completion of Operation Homecoming, there was both official and public confusion about who controlled U.S. prisoners captured in Laos. As has been stated, it does not appear that the prisoners on the DRV/Laos list were ever under the control of the LPF. Rather, they were captured in Laos by the North Vietnamese and, with one exception, transferred expeditiously out of Laos to North Vietnam. The U.S.

<sup>143</sup> Sieverts testimony before House Foreign Affairs Committee, December 5, 1973.

<sup>144</sup> Paper, "Background Information on PW/MIA Situation in Laos", DIA, PW/MIA branch, 16 Aug 74.

<sup>145</sup> Memorandum for Record, "Thai/Lao Debriefs", DIA, PW/MIA branch, Oct. 8, 1974.



POWs thought to be held in caves in northern Laos were not released, nor was any accounting given for MIAs in Laos.

Confusion about this issue of control was apparent not only to the public, but to some officials, as well. For example, the U.S. delegation to the FPJMC, which was responsible for implementing the accords, believed at least until mid-March that the prisoners on the February 1 list were actually being held in Laos by the LPF. The official military history of the U.S. delegation to the FPJMC, written in 1974, refers to the American success in obtaining the release of "the prisoners held by the Pathet Lao."<sup>146</sup>

From the very beginning of negotiations, the DRV sought to maintain the fiction that its troops were not in Laos and that it could not take any action that affected Laos without consulting the Pathet Lao. And yet, according to U.S. officials, the LPF was almost wholly dependent on, and controlled by, the DRV. Ambassador Sullivan, for example, estimated that the total number of armed LPF forces did not exceed 500. Ambassador Godley testified that "anything that Le Duc Tho said about Laos would be law in the Pathet Lao areas."<sup>147</sup>

Dr. Kissinger told the Committee that:

Our perception of the Pathet Lao was that they were stooges of Hanoi, that they had no independence whatsoever, that they were totally controlled by the communists in Hanoi. . . we had every confidence that Hanoi could make the Pathet Lao do what they wanted.<sup>148</sup>

Ambassador Sullivan also ridiculed the controversial LPF spokesman, Soth Petras, as a "figurehead and a nonentity who had no communications himself with anything going on in the military zone."<sup>149</sup> Despite this, the U.S. found itself negotiating with Soth Petras for the release of prisoners he had insisted that the LPF had, only to be put off first with pleas for delay and ultimately confounded by statements that the prisoners did not exist.

During the period immediately prior to the signing of the peace agreement, and throughout the 60 plus days leading up to the end of Operation Homecoming, the DRV and LPF played an elaborate game at American expense. The North Vietnamese made a show of "consulting" with the LPF about U.S. prisoners who were jailed in the DRV's own capital of Hanoi. The DRV promised Dr. Kissinger that it could guarantee the release of U.S. prisoners held captive by the LPF, but failed to do so. The LPF insisted it was not bound by North Vietnamese commitments, although it was clearly dependent on the DRV in almost every way. And time and again, LPF spokesmen teased U.S. public and official opinion by discussing the prisoners they claimed to be holding.

U.S. officials tried to break through the charade, but were left, ultimately, trying to work around it. The U.S. was handicapped by its reluctance to set a precedent by accepting as reality the fact that North Vietnam could exercise what amounted to sovereignty

<sup>146</sup> Dillard, p. 35.

<sup>147</sup> Godley testimony, September 24, 1992.

<sup>148</sup> Kissinger testimony, September 22, 1992.

<sup>149</sup> Deposition of William Sullivan to Select Committee.



in parts of Laos and Cambodia. The charade reached its apparent climax on March 28, 1973 when American officials accepted the prisoners on the DRV/Laos list not from their North Vietnamese jailers, but from the Pathet Lao.

The problem of who controlled Laos continued during the post homecoming period when the Administration's focus shifted from the possible repatriation of live prisoners to obtaining an accounting for the missing. The dominance of North Vietnamese troops in Laos meant that the DRV would logically know more than the LPF about MIAs lost in that country. But since the DRV wouldn't admit to knowledge about what happened in Laos, that avenue of inquiry was foreclosed. Meanwhile, as described above, efforts to obtain information directly from the Pathet Lao bore no fruit.

Within a year, the combination of DRV duplicity, LPF intransigence and American frustration caused DIA to sum up the situation in a memorandum which concluded that: "One can only speculate about the current fate of the Americans who were known to have been held captive by the Pathet Lao in previous years."<sup>150</sup>

*What could the administration have done?*

#### *Diplomatic efforts*

The obvious and most difficult question facing U.S. decision-makers during the 60 day period following the signing of the PPA was what to do about apparent North Vietnamese violations. With respect to the military issues of ceasefire, withdrawal of advisers, withdrawal from Cambodia and Laos and arms supply, all sides violated the agreement to some extent. But with respect to U.S. POWs, the issue boiled down to whether the American side could force or persuade the North Vietnamese to do more than it was apparently willing to do to meet its obligations.

As documented above, top-level Nixon Administration officials were advised by DIA and others throughout the 60-day period of the possibility that there were live American POWs in Indochina who were not on either the January 27 lists or the February 1 DRV/Laos list. The area of greatest concern was Laos, but there were a substantial number of discrepancy cases in North and South Vietnam, as well.

At the time the agreement was signed, Administration officials were unrestrained in expressions of American resolve to obtain full compliance on POW/MIAs. Dr. Kissinger said the U.S. would "brutally enforce" the return of prisoners.<sup>151</sup> Our delegation to the FPJMC in Saigon considered the release of U.S. POWs "the major emotional motivating force for . . . Americans. It was probably also the only issue over which the United States could justify a renewal of bombing raids or other measures involving military force, should the North Vietnamese clearly demonstrate their intent to violate the provisions . . ."<sup>152</sup>

Despite this, and despite the fact that air strikes were considered and ordered on ceasefire and infiltration-related issues, nothing in

<sup>150</sup> DIA memorandum, April 17, 1974.

<sup>151</sup> Memorandum of Conversation, Kissinger with National League of Families, January 29, 1973.

<sup>152</sup> Dillard, p. 59.

the records reviewed by the Select Committee indicates that the President or Dr. Kissinger seriously considered overt military action on the POW/MIA issue at any time after the signing of the PPA.

A number of diplomatic actions were taken during the 60 day period, but with marginal success. For example:

The U.S. delayed delivery of President Nixon's letter on reconstruction aid until the DRV came up with a list of prisoners from Laos; the list was delivered but it was disappointingly short and incomplete;

The U.S. threatened to cancel Dr. Kissinger's trip to Hanoi because of the incomplete nature of the lists, but did not do so;

During the Hanoi trip, Dr. Kissinger demanded an accounting of discrepancy cases, but the demand was ignored;

On March 20, the U.S. again protested to the DRV about the failure to obtain an adequate list of prisoners from Laos, and threatened "grave consequences" if the failure persisted; once again, the protest was in vain; and

U.S. diplomatic approaches to the Pathet Lao throughout February, March and thereafter led nowhere.

#### *Military options*

In mid-March, U.S. concern about continued DRV use of the Ho Chi Minh trail caused the Administration to consider a two to three day period of bombing in southern Laos. This course of action was recommended to the President by the WSAG group and by Dr. Kissinger. In his testimony, Dr. Kissinger says that the President ultimately decided against this course of action and sought, instead, another round of talks with Le Duc Tho.

The issue arose again in mid-April when DRV forces continued to operate in northern Laos in violation of the PPA and the Laos cease fire agreement. This time, the U.S. went ahead with two days of B-52 bombing raids inside Laos. This step led to an agreement between the U.S. and the DRV to negotiate PPA compliance issues in May and June, 1973. In Cambodia, meanwhile, heavy U.S. bombing raids continued until Congress prohibited further funding for them, effective August 15, 1973.

Although the U.S. did not threaten or carry out air strikes over the POW/MIA issue, it did on two occasions briefly suspend troop withdrawals. The first instance was on February 26th when the DRV failed to produce the list of POWs due to be released the following day. Dr. Kissinger described the Administration's response this way:

We responded very sharply by suspending American troop withdrawals and mine-clearing operations in North Vietnamese harbors. Secretary of State Rogers declined to attend any sessions at the International Conference in Paris. A terse message was sent to Hanoi simply informing it of our actions. In addition, White House press secretary Ronald Ziegler was instructed to read at his noon briefing a tough statement making clear that the release of American prisoners was an unconditional obligation of North Vietnam not linked to any other provision of the Agree-

ment. A day later, I told Ziegler that I was certain the pressures would work (in a conversation that also clearly indicates my plan to leave government soon): "A year from now when I'm out of here, they're really going to put it to us. Not for that reason but a year from now, they're going to be tigers but now they're not ready." The POWs were released on schedule.<sup>153</sup>

On March 22, 1973, after the North Vietnamese threatened not to go forward with the release of prisoners on the DRV/Laos list, and after DIA reported that the LPF might well be holding other POWs, the U.S. again decided to halt the withdrawal of American troops. Initially, the U.S. demand was that the DRV guarantee the return of the U.S. prisoners on the DRV/Laos list and all others held by the Pathet Lao. This decision was modified the following day to make full U.S. withdrawal contingent only upon the release of prisoners from the January 27 and February 1 lists. Again, the DRV essentially acceded to the U.S. demand.

Just prior to the completion of Operation Homecoming, Defense Department staff produced for Secretary Elliot Richardson a series of recommended options, including military options, intended to increase pressure for the return of possible U.S. POWs in Laos. The strongest options, including air strikes against Hanoi and Laos, were not passed on by the Secretary to Dr. Kissinger. Secretary Richardson did recommend consideration, however, of the movement of a new carrier task force into the waters off Vietnam's coast and the commencement of military air reconnaissance missions over Laos. Neither step was carried out.

**Restraints on the Use of Force.** Despite the Administration's strong concerns about the completeness of the POW release, there were a number of factors arguing against a decision to suspend troop withdrawals or move beyond that to the resumed use of military force.

First, and foremost, the signing of the Accords and the commencement of the ceasefire on January 27, 1973 had been welcomed with enthusiasm by the American people and were viewed as marking an end to U.S. involvement in a tragic and unpopular war. Any action by the Administration to disrupt implementation of the peace agreement would carry risks and might, unless clearly and convincingly explained, prove unsustainable in the face of the American public's desire for an end to the war. Nevertheless, the U.S. did temporarily suspend troop withdrawals for short periods of time without engendering public opposition.

Second, the Administration was concerned that any military action taken during the 60-day period following the signing of the Accords would imperil the release of the POWs whose names had been included on North Vietnam's lists but who had not yet been released. This appears to be the primary reason that President Nixon did not agree to the WSAG's recommendation to bomb Laos in mid-March.

Third, the Administration could not be sure that resuming military hostilities would lead to the release of additional U.S. POWs.

<sup>153</sup> Dr. Kissinger's memoirs, volume II, p. 317.

The available intelligence information was not sufficient to say with certainty that any particular individual was alive and being held in a particular location. This argued against rescue missions or other military actions aimed at the release of specific POWs. More general military actions, such as bombing Hanoi or the Ho Chi Minh Trail, might have been more likely to create new POWs than to gain the release of existing ones.

Balancing. Ambassador Lord told the Select Committee of his belief that the Administration's decision not to use force or to attach stronger conditions to troop withdrawals because of the POW issue reflected a balancing of concerns about the possibility that live POWs were being left behind against concerns resulting from the deterrents to military action discussed above. As Ambassador Lord testified:

The President in the end decided not to scuttle the agreement and resume the war over the MIA question. It was a very difficult decision. I believed then it was a correct one. I believe that still . . . .

Although we had strongly suggestive intelligence that the lists [were] incomplete, the American society would have blown apart if the President overturned the agreement and resumed the fighting. It is doubtful that Congress would have supported such a policy. Indeed, it would probably have prevented it. Our remaining prisoners who were on the lists would not have returned. More Americans and Vietnamese allies would have been killed and captured.<sup>154</sup>

Admiral Moorer echoed Ambassador Lord's testimony. Asked why the United States completed the withdrawal of its troops without insisting that the Pathet Lao first release the U.S. POWs they were believed to be holding, Admiral Moorer stated:

When this started and the POWs [on North Vietnam's lists] came back and so on, and there was a very euphoric reception, and the President gave a party on the White House grounds, and all the wives of POWs came and so on, and press release after press release were that we were withdrawing the troops, at that point, no President could have said, "Oops, we're not going to withdraw the troops because these people won't agree with us. They're not carrying out their part." At that point in history, we didn't have the stomach for doing what you're asking me why we didn't do it . . . .

Don't forget, [the President] was getting tremendous pressure from the Congress, the public, and the New York Times, and the Washington Post, everyone you could think of. They had had a belly-full of this whole war. I think we almost would have had a rebellion if we had turned around and started fighting like hell in Laos again. That's my explanation of it.<sup>155</sup>

<sup>154</sup> Lord testimony, September 21, 1992.

<sup>155</sup> Moorer testimony, September 24, 1992.

During his testimony before the Select Committee, Dr. Kissinger blamed Congressional opposition to further U.S. involvement in the war for the Administration's inability to obtain DRV compliance with the POW/MIA and other provisions of the peace agreement:

In theory, we had three sources of leverage available; bombing the north, offering economic aid to Hanoi and giving military and economic aid to Saigon to deprive Hanoi of the hope of military victory. The Congress took all three levers away, denying us both the carrot and the stick. When the Congress eliminated our leverage, we were trapped in the classic nightmare of every statesman. We had nothing to back up our tough words, but more tough words. Under such conditions, we had no bargaining position left . . . .

The Paris Peace Accords contained clear and binding commitments that all prisoners throughout Indochina would be accounted for and returned. If the Vietnamese violated these provisions, it was not because of any omission by responsible U.S. officials, even less any cooperation with them, but because we were stripped of the weapons we might have used to impose that commitment.<sup>156</sup>

Former President Nixon views are similar:

As it became clear to the North Vietnamese that the Congress would not permit a resumption of the bombing to enforce the Paris Accords, their incentive for complying with the agreement regarding MIAs and POWs as well as other provisions was completely destroyed. The return of all our POWs and an accounting of all our MIAs was difficult to achieve because of the intransigence of the North Vietnamese and the substantial sentiment in the country and in Congress for an unconditional withdrawal from Vietnam in advance of any North Vietnamese commitment to return our prisoners and account for our missing . . . .<sup>157</sup>

Former Defense Secretary Elliot Richardson, on the other hand, expressed puzzlement and skepticism about the Administration's failure to act on the limited military options his Department had recommended immediately Prior to the conclusion of Operation Homecoming:

I don't believe that a degree of uncertainty as to the numbers or the firmness of the information, given the totality of the information, should have affected what we did up to at least the resumption of bombing or the use of force, and the recommendations in this memorandum represent in substance the most effective combination of measures that Larry Eagleburger and Colonel Secord and Admiral Bigley and those of us who reviewed this memorandum could come up with . . . .

<sup>156</sup> Kissinger testimony, September 22, 1992.

<sup>157</sup> Nixon letter, p. 4.

I think if I had been involved at that time, I would have argued for some use of force. After all, you don't have to restart the whole war to authorize some air strikes as a way of conveying that we meant business. But those are tough calls . . .

I can't even give you conjectural explanation as to the failure to follow up the recommendations in my memorandum to Kissinger . . . I can only say that had I known the steps called for in the memorandum to Kissinger were not being pursued, if they weren't, I think I would have raised hell about it. . . .<sup>158</sup>

### *The Congress*

During the Committee's hearings, it was contended by Dr. Kissinger and some Members of the Committee that Congressional attitudes would have precluded any Administration effort to respond forcefully to the DRV's failure to provide an accounting for missing American servicemen. These Members of the Committee believe that their contention is supported by the Senate's rejection on May 31, 1973 of an amendment offered by U.S. Sen. Robert Dole. The Dole amendment would have permitted the continued U.S. bombing of Laos and Cambodia if "the President finds and forthwith so reports to the Congress that the Government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia or is otherwise not complying with the provisions of article 8" of the Paris Peace Agreement.<sup>159</sup>

Other Members of the Committee believe that the amendment offered by Senator Dole, which was an amendment to another amendment offered by Senator Mark Hatfield, was aimed far more at authorizing President Nixon to continue prosecuting the war in Southeast Asia than at gaining an accounting for missing Americans.

Former President's Nixon view is that:

The responsibility for denying to our Administration the means to force the North Vietnamese to comply with the agreements concerning the accounting for MIAs lies squarely on those who opposed the use of military force to bring the war to a conclusion and who later sabotaged our efforts to enforce the peace agreement by drastically reducing American aid to South Vietnam and prohibiting the resumption of the bombing in order to enforce the Accords.<sup>160</sup>

During the Committee's hearings on the Paris Peace Accords, Senator Dole testified that:

When you line up the culprits who got us where we are today, the Senate itself should enjoy a prominent place at the front of the line . . . It was the Senate who sent Henry

<sup>158</sup> Richardson testimony, September 24, 1992.

<sup>159</sup> Congressional Record, May 31, 1973, pps. 17668 et seq.

<sup>160</sup> Nixon letter, p. 4.

Kissinger to a gunfight at the OK corral, but gave him only blanks.<sup>161</sup>

### *Watergate*

A final, highly important factor inhibiting President Nixon's ability to respond forcefully to DRV violations of the PPA was the emerging Watergate scandal. Several witnesses told the Select Committee that, by early spring 1973, much of the President's time and attention was devoted to this subject. In Admiral Moorer's words, for example, "Watergate was bubbling like mad." And Dr. Kissinger's memoirs include numerous references to the President's lack of focus during this period:

It was a different Nixon in March 1973. He approached the problem of the violations in a curiously desultory fashion. He drifted . . . Nixon clearly did not want to add turmoil over Indochina to his mounting domestic perplexities.

The normal Nixon would have been enraged beyond containment at being strung along like this, but Watergate Nixon continued to dither . . .

Nixon was simply unable to concentrate his energies and mind on Vietnam. The records show that he was engaged in incessant meetings and telephone calls on Watergate. The ill omens did not cease, the most extraordinary being an intelligence report I received while en route to Paris (in May, 1973). It was a North Vietnamese account that described how the Viet Cong leaders were briefing their subordinates in the field. The report confirmed our knowledge of Hanoi's buildup, referring to a "general offensive" that was in preparation. But it was being postponed, the briefing stated, to give Watergate an opportunity to complete the paralysis of our Presidency and the demoralization of our South Vietnamese ally. It accurately predicted that the wounded President now lacked the authority to retaliate against North Vietnamese transgressions.

Nixon could have taken his case to the American people, arguing that we could not abandon what 50,000 Americans had died to preserve. A Nixon re-elected by one of the largest majorities in history might well have prevailed, as he had so many times before. In the swamp of Watergate, the President's political strength drained away and this option did not exist at all.<sup>162</sup>

The executive paralysis stemming from Watergate had several effects. It meant that the President had less time to focus on complicated political/military issues such as responding to the possibility that prisoners might be left behind in Laos. (Indeed, a transcript of the Oval Office tapes for the critical date of March 23, 1973 indicates that the President spent a significant part of that day discussing Watergate with his closest aides.)

<sup>161</sup> Select Committee hearing, September 24, 1992.

<sup>162</sup> Dr. Kissinger's Memoirs, volume II, pps. 318-328.



Watergate almost certainly diminished the President's willingness to undertake difficult and controversial initiatives, while also reducing the likelihood that his actions would be accepted at face value and supported either by Congress or the public.

Finally, the Watergate scandal disrupted the focus and attention not only of the President, but of key federal agencies, as well. During the first six months of 1973, for example, four different men served as Secretary of Defense or Acting Secretary of Defense and three as Director of Central Intelligence. This left the POW/MIA issue at Defense primarily in the hands of Deputy Secretary Clements who was among those most skeptical of the possibility that any live U.S. POWs remained after Operation Homecoming. As for the CIA, James Schlesinger, who was the DCI from January through May, 1973, told the Committee that he was not involved in the POW/MIA issue during that time. Rather, he spent literally "90 percent" of his brief tenure as DCI trying to determine the extent of his agency's possible involvement in Watergate.<sup>163</sup>

*Pro and con/were POWs left behind?*

The range of information available to the Committee about the possibility that American POWs were left behind after Operation Homecoming goes beyond that gathered during the Committee's investigation of negotiations surrounding the Paris Peace Accords. Thus, no judgment on this critical point is made in this section of the Select Committee's report. It seems useful, however, to summarize briefly the information obtained and the testimony received on this subject, including the opinions of expert witnesses.

*Indications that Americans may have been left behind*

As discussed elsewhere in this report, the United States had hard evidence that some Americans who were held captive by the North Vietnamese or the Pathet Lao did not appear on the DRV's December, 1970 list of prisoners. This evidence was publicized widely by Nixon Administration officials, especially Secretary Laird, and was raised directly with the DRV both during the public peace negotiations and by Dr. Kissinger during his February, 1973 visit to Hanoi.

The possibility of live U.S. prisoners being held back, especially in Laos, was taken seriously enough by high-level Administration officials to justify a short-lived decision to halt troop withdrawals required by the peace agreement, and led to recommendations from the Department of Defense for military action.

Notwithstanding the evidence that some individuals who had certainly or probably been held captive were not being returned, the United States did not have hard, current information that particular Americans were being held in particular locations.

*Witness assessments*

The witnesses who appeared before the Select Committee during its investigation of issues related to the Paris Peace Accords included those best informed and best positioned to make judgments

<sup>163</sup> Deposition of Mr. James Schlesinger to Select Committee.



about the degree of likelihood that live American POWs may have been left behind after Operation Homecoming.

In some cases, these individuals based their judgments entirely on their recollection of contemporaneous knowledge, while others relied on a combination of memory and exposure to information and documents only recently released.

Dr. Henry Kissinger, for example, told the Committee that "I think it's improbable that any (U.S. POWs) are alive today. I honestly did not think there were any alive in Vietnam when the war ended. I have always kept open the possibility in my mind that there were some . . . in Laos." <sup>164</sup>

Dr. Roger Shields' reply to the question of whether any Americans were left behind was: "I do not know and I did not know in April, 1973." <sup>165</sup>

Former CIA Director and Defense Secretary James Schlesinger's judgment was that: "I have a high-probability assessment that people were left behind in Laos, and a medium-probability assessment with regard to Vietnam." <sup>166</sup>

Former Secretary of Defense Melvin Laird told the Committee that "it was my gut feeling that there were more" U.S. POWs than those admitted to by North Vietnam. <sup>167</sup>

Major General Richard Secord expressed the view that Americans had been kept behind in Laos:

Gen. SECORD. . . . I had a lot of years of experience with Laotian matters. . . . I served in the Central Intelligence Agency in the field in Laos for 1966, '67 and '68 and was back there again briefly in '69 and then I was the Laos desk officer in the Office of the Secretary of Defense International Security Affairs for awhile in '72, and then by the time you're talking about here, I guess I was the head of the Southeast Asian branch. . . .

. . . what was going on with respect to the POWs is we were tracking as carefully as we could all the intelligence information on POWs, especially after it became clear that there was going to be a Paris accord. . . .

Sen. SMITH. So, based on your tracking, then, there were confirmed POWs in Laos during the war?

Gen. SECORD. Indeed. You've mentioned some of their names this morning. . . .

Sen. SMITH. When you say POWs in Laos, a number, you are obviously referring to a larger number than the nine.

Gen. SECORD. In addition to those nine. . . .

Sen. SMITH. And did all of those people come home that you were tracking?

Gen. SECORD. None of them that I know of have been located or even heard from since the Paris accords, but we did know to, I think, a reasonable level of certitude, that there were more. . . .

<sup>164</sup> Kissinger testimony, September 22, 1992.

<sup>165</sup> Shields testimony, September 24, 1992.

<sup>166</sup> Schlesinger testimony, September 21, 1992.

<sup>167</sup> Laird testimony, September 21, 1992.

Sen. SMITH. Do you believe that there were people there after Operation Homecoming, based on what you knew?

Gen. SECORD. Well, yes, of course I believed there were people after Operation Homecoming.<sup>168</sup>

Former Assistant Secretary of Defense Clements, however, testified to his belief around the time of Operation Homecoming that unreturned U.S. POWS were "in all probability dead." This belief grew stronger during the remainder of his service with the Department of Defense due to DIA's failure in Mr. Clements' opinion to uncover even "one iota's evidence that there was a single POW in Vietnam or anywhere in the Southeast Asian theater of operation."<sup>169</sup>

Finally, Ambassador Winston Lord wrote in a letter to the Select Committee on October 27, 1992 that:

President Nixon did not knowingly leave American prisoners behind when he implemented the Paris Agreement . . . The discrepancies with our intelligence were very disturbing, but we had no conclusive proof that any prisoners were being left behind.<sup>170</sup>

#### *Laos: Complicating factors*

Three hundred and fifty Americans remained unaccounted for in Laos after Operation Homecoming. Of these, the DIA had informed policymakers in February and March, 1973 that approximately 215 disappeared under circumstances where some accounting for their death or survival should be possible. Of these 215, there is evidence that a small number of specific individuals did survive their incidents, and that some number of other individuals, not clearly identified, also survived.

One of the great tragedies and frustrations of the POW/MIA story is that so few of those lost in Laos ever returned. The Committee's analysis of why this occurred would not be complete without consideration of the special challenges faced by any U.S. airman downed in that country. In that connection, William Sullivan, who served as Ambassador in Laos from 1964 to 1969, made these observations to the Committee:

A lot of the casualties taken in Laos were taken in that Ho Chi Minh trail area by these young fellows who went in on what I always regarded as suicide missions.

I would say that the chances of anyone surviving as a POW, in my judgment, pretty nil, although some were sent back up the Ho Chi Minh Trail . . .

In that brutal environment, anybody captured there was pretty soon disposed of with a bullet in the head. So that would account for in my judgment the high ratio of nonreturnees from people who might have been captured in the area. The second area we had were air missions in Laos and air missions going toward North Vietnam . . . the pilots . . . were usually shot down in very terrible jungle. They were usually captured, depending to some degree on

<sup>168</sup> Secord testimony, September 24, 1992.

<sup>169</sup> Clements testimony, September 24, 1992.

<sup>170</sup> Letter from Lord to Select Committee, October 27, 1992.

the season, because if it was the dry season, the North Vietnamese regulars might have been in there. If it was the rainy season, they would be captured by their irregular forces, highly undisciplined forces and my guess that a lot of them even after capture were either tortured to death, starved to death, treated in such a way that they developed dysentery and died . . .

And I think that accounts in some measure for the high ratio of people who didn't return after either we got a beeper from them and knew they were on the ground or we even had a sighting and knew they were on the ground . . .

I was in Paris when the Vietnamese finally disclosed that the number from Laos was ten . . . and there was enormous disappointment. Admiral Moorer, had a figure and I can't remember where he got it, but it was somewhere around 40 that he was anticipating, so we thought there was a shortfall even given . . . the filter of all these considerations I've just made, we felt there was a shortfall of possibly somewhere around 30. But the measure of hope and the quality of hope we had for anybody who got knocked down in Laos was not terribly high.<sup>171</sup>

Dr. Roger Shields explained his uncertainty about the possibility that any Americans might have remained behind after Operation Homecoming by emphasizing the limited extent of U.S. knowledge about Americans taken captive in Laos. According to Dr. Shields:

The Dept. of Defense carried only four individuals as prisoner in Laos who were not released during Homecoming . . .

One of these individuals I think we entered into a prisoner status mistakenly. That's George Clark . . .

Another one, a civilian, Eugene DeBruin, was last heard from directly as he escaped. He never returned to U.S. control. And I think that the intelligence groups feel they have very good information that he died.

So that would leave two individuals carried as prisoner in Laos, and the evidence of their capture and imprisonment is undeniable . . . David Hrdlicka and Charles Shelton.

After their capture, though, information was very, very sparse and was very negative about their continued survival . . .

The DIA believed, as I recall, that three other individuals may have been captured, although the services carried these men as missing. And of these men, the remains of one were found associated with the wreckage of his aircraft . . .

No one who was actually held in Laos ever wrote a letter . . .

Photos of David Hrdlicka and Eugene DeBruin in captivity came into our possession and a short broadcast made

<sup>171</sup> Sullivan testimony, September 21, 1992.

by David Hrdlicka was also heard. And all of this occurred very substantially a long time before Operation Homecoming.

Now, Secretary Schlesinger testified this week that our intelligence information regarding Laos was good . . . if that is true, then it is clear that very few men, and perhaps even none as some people believe, and I don't include myself in it, were taken prisoner in Laos.

Now this supposition is supported, to some extent, by the far greater number of combat rescues which occurred in Laos than in North Vietnam . . . we actually recovered more men from Laos through rescues or returnees than we had out of North Vietnam. And I think that says something about the status of the missing in action, because they were the more difficult cases, where our rescue aircraft were not able to get in . . .

Most of the intelligence about suspected prison camps or U.S. prisoners in Laos, received while I was in the Pentagon, was very vague and impossible to verify. And the fact remains that we knew, and I believe know today, very little specifically about our men missing in Laos.<sup>172</sup>

#### *Questions of continued links between U.S. aid and POW/MIAs*

The Committee looked into questions which have been raised over the years concerning the extent of any linkage between United States economic assistance to Vietnam and U.S. efforts to obtain the fullest possible accounting of missing servicemen.

As noted earlier, there were indications that the North Vietnamese were linking these issues during the peace negotiations. After the signing of the Paris Peace Accords, Vietnam continued to attempt to use their obligations under the accords to provide information on POW/MIAs as leverage to extort U.S. economic assistance. The U.S. steadfastly rejected the Vietnamese position.

Documents to support the contention that the Vietnamese have consistently linked the issues of U.S. aid and accounting for POW/MIAs were compiled by the Committee's Vice Chairman and were included in the official record of the Committee's hearing on September 21, 1992.

#### CONCLUSIONS

As stated at the beginning of this chapter, the primary purposes of the Committee's investigation of the Paris Peace Accords were to (1) uncover information bearing on the possibility that U.S. POWs were left behind in Southeast Asia after Operation Homecoming; and (2) determine whether there were factors involved in the negotiation of the agreement, in the agreement itself, or in subsequent public characterizations of the agreement that affected our ability to obtain the fullest possible accounting of our POW/MIAs or that otherwise contributed to the ongoing controversy over the POW/MIA issue.

<sup>172</sup> Shields testimony, September 24, 1992.

Nothing in this chapter, or in this report, should be interpreted in any way as diminishing the historical responsibility that the Government of North Vietnam bears for its failure to live up to the POW/MIA provisions of the peace agreement. If American prisoners were, in fact, held back after the war, the responsibility for that and for failing to provide an accounting for the missing rests with those in power in Hanoi and in Laos, not with American negotiators or the opponents or proponents of U.S. involvement in the war.

The Committee believes that its investigation has contributed significantly to the public record of the negotiating history of the POW/MIA provisions of the Paris Peace Accords, and of the complications that arose during efforts to implement those provisions both before and after the completion of Operation Homecoming. That record indicates that there existed a higher degree of concern within the Administration about the possibility that prisoners were being left behind in Laos than had been known previously, and that various options for responding to that concern were discussed at the highest levels of government.

The Committee notes that Administration statements at the time the agreement was signed may have understated the foreseeable problems that would arise during implementation and that this may have raised public and family expectations too high; and that statements made after the agreement was signed may have understated U.S. concerns about the possibility that live prisoners remained, thereby contributing in subsequent years to public suspicion and distrust. However, the Committee believes that the phrasing of these statements was intended to avoid raising what were believed to be false hopes among POW/MIA families, rather than to mislead the American people.

### CHAPTER 3: ACCOUNTING FOR MISSING SERVICEMEN

#### OVERVIEW

The responsibility for accounting for American military personnel and civilians missing or held captive as a result of the war in Southeast Asia resides with the Departments of Defense and State, respectively. Over the years their efforts have been supplemented by Congressional inquiries and Presidentially appointed emissaries. Nevertheless, the fullest possible accounting has yet to be obtained. The inability of the U.S. Government to achieve this goal over the last 20 years has spawned criticisms of the process and suspicions about the integrity of the effort.

The magnitude of work required to achieve the fullest possible accounting further underscores the need for cooperation from Southeast Asia governments. For instance, as of 1992, there were nearly 500 crash sites associated with unaccounted for U.S. personnel, according to the Department of Defense. Less than 100 of these sites have been visited by U.S. investigators. In Laos, there are approximately 250 crash sites associated with unaccounted for U.S. personnel, of which less than 40 have been visited by U.S. investigators. As of the publication date of this report, U.S. investigators have not had the opportunity to visit any detention sites or prison